

PERSPECTIVES ON HUMAN RIGHTS IN MIZORAM : A CRITICAL STUDY

A
THESIS

SUBMITTED TO MIZORAM UNIVERSITY, AIZAWL,
IN PARTIAL FULFILLMENT OF THE REQUIREMENT
FOR THE AWARD OF THE DEGREE OF
DOCTOR OF PHILOSOPHY
IN PUBLIC ADMINISTRATION
(SCHOOL OF SOCIAL SCIENCES)

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MIZORAM UNIVERSITY, AIZAWL.796012
MIZORAM
2006

ACKNOWLEDGEMENT

The study on 'Perspectives on Human Rights in Mizoram: A Critical Study' could not have been materialized without the encouragement and tireless help of my guide Prof RN Prasad, Ex-Head of Departments, Public Administration, Political Science, and Dean, School of Social Sciences, Mizoram University, Aizawl, who suggested sundry improvements and provided nourishing guidance and inspirations during my course of study/research.

I am indebted to the higher functionaries of the Department of Higher and Technical Education, Government of Mizoram for a grant of a study leave for two years to carry on this empirical research and also arranging the financial assistance of the Government of Mizoram towards the carry out of this relevant study.

I am also greatly thankful to my Principal, TBC Liandala, Government Kolasib College, Kolasib, Mizoram for inspiration and liberal helps.

I also express heartfelt thanks to my wife, parent, brothers and friends from whom I have obtained helps of any sorts to complete the research work.

The 30th November 2006


(C.LALHMANMAWIA)

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CHAPTER – I

1.1 Brief Political Profile of the State (Mizoram); 1.2 Evolution and meaning of the term Human Rights; 1.3 Process of Universalization of Human Rights; 1.4 Relevance of Human Rights in fast changing Institution of the State Power.

1.1 Brief Political Profile of the State (Mizoram)

Mizoram, the 23rd state of the Indian Union is situated on the north-eastern corner of India. Mizoram literally means land of the Mizos. Prior to 1890 there was no proper administration in the areas. Each village had a chief who had a full control of the Village. After the British annexed the hills areas, the area was divided into two administrative wings viz. North Lushai Hills District a part of Assam and the South Lushai Hills a part of Bengal in 1890. The Political Officers were made in-charge of the districts with the administrative control. In 1898 the British merged the two Districts into a single district-the Lushai Hills District, a part of Assam for administrative convenience. The Lushai Hills District was later named the Mizo Hills District under an Act of Parliament from 20th April 1959. The Mizo Hills District was elevated to the status of Union Territory of Mizoram on 21 January 1972 under the provisions of the North-Eastern Areas (Re-Organization) Act, 1971. Again the

Union Territory of Mizoram was elevated to the 23rd state of the Union of India on 20th February 1987, under the State of Mizoram Act, 1986 (34 of 1986), enacted by the Parliament of India.

The total area of Mizoram is 21,087 sq km. It has a population of 8,91,058 and the sex ratio being 938 female per 1000 male (Census, 2001). It is surrounded by Myanmar (Burma) in the east and south, Bangladesh in the west, Cachar District of Assam and Manipur in the north and Tripura in the north-west. It, therefore, has approximately 1,014 kms international boundaries with Myanmar and Bangladesh and approximately 495 kms of inter-state boundaries with Assam, Manipur and Tripura. Aizawl is the capital city of Mizoram. Presently there are 8 Districts in Mizoram namely Aizawl, Lunglei, Champhai, Kolasib, Saiha, Lawngtlai, Mamit, Serchhip and three Autonomous District Councils namely-Pawi (presently known as Lai since 1st March 1989), Lakher and Chakma.

The fabric of Mizo society has undergone tremendous changes over the years. Before the British moved into the Lushai hills, for all practical purposes the village and the clan formed units of Mizo society. ¹ However, with the advent of the British and a consequent introduction of Christianity and education on the western pattern, the society in no time got radical transformation. Education has been successfully flourishing in the state that marks Mizoram second highest literacy percentage among the Indian states with 88.49 % after Kerala with 90.92 %. Mizoram also has another distinction of being the most urbanized state in India with as much as 49.50 % of its population living in urban areas. (2001 census).

Tremendous shift of the Mizo society from the traditional to the modern one was seen during the past few decades with the introduction of new administration in the territory. The institution of Chieftainship was abolished in 1954. Democracy was introduced in the territory that led to the rapid transformation of the society towards modern one. The whole public life in the early period was guided by the Mizos social code of ethic known as '*Tlawmngaihna*' an untranslatable term meaning on the part of everyone to be hospitable, kind, unselfish and helpful to others. It also stands for self-sacrifice for the service of others. The Mizo people

under this useful custom render all voluntary services.² However, after majority population of the region embraced Christianity with so much dedication and submission that the Christian Church Organisation guides the entire social life and thought process. Again, when the region was engulfed with political strife and insurgency problem as a result of Mizo National Front (MNF) independence movement from the Indian Union since 1966, Mizo society experienced drastic changes that affected sense of values and hence materialism started to gain a ground in the minds of the people. Egalitarian nature of the Mizo society has been fading way in the event of ever growing multiple economic activities.

1.2 Evolution and Meaning of the term Human Rights.

Evolution of Human Rights.

The problem of human rights is essentially a matter of relationship between man and the institutions at a given time. Like any other social norms, human rights possess historical character and which is why to have a clear understanding about it there is a need to look through the human history.

Man is naturally bestowed with two related characteristics namely *individuality* and his *social being*. Being a social being he need to live together with his fellow human being but at the same time his individuality in relation with organized community need certain protection. Then come the question of norms of social behaviour, defining the rights and obligations of the individual, particularly the nature of socially acceptable claims, and the restrictions imposed by the need of maintaining the social order. With the passage of human history, claims of individuals or “rights” evolved from religious activities, human experiences, observations and reflections. These rights or established customs or understandings including the relationship between ruler and the ruled, very much essential for taking a refuge against human might, tyranny of oppression and against arbitrary rule were brought together in a proper form which at a particular

point of human history that led to the rise of the concept of natural law. Therefore, the history or origin and evolution of the concept of human rights became essentially a matter of human history, an era from which human being started to live in properly organized community and a consequent evolution of the concept of natural law or rights. As a result, the concept of human rights is believed to be an old one as old as the human history. However, due to various practical reasons, origin of human rights may be traced back to the time of ancient Greek society when the concept of natural rights based on natural law found its proper form.

Stoic philosophers were believed to be the first to develop natural law theory. They contributed for the development of the notion of natural rights of man and by virtue of the theory they offered an explanation of the nature of human rights i.e. rights which every human being possesses by virtue of being human.³ However, it may be noted that citizens of Greek City States, prior to the formulation of the theory of natural law by the Stoic philosophers, enjoyed some basic rights like - 1) the right to freedom of speech (Isogoria); 2) the right to equality before law (Isonomia); 3) the right to equal respect for all.⁴ Nevertheless, it is an undeniable fact that the Stoic philosophers contributed a lot for the beginning of the concept of natural law for they preached the idea of universal brother hood of mankind and laid stress upon the equality and freedom for all which are the very essential features of human rights. Romans applied the Stoic conception of natural law in the formation of body of legal rules for the administration of justice. It was an intellectual contribution of Romans that they developed this body of rules on the basis of the custom and as well as by the application of reason.⁵

The concept of human rights received remarkable development during the Middle Ages as thinkers like Abelard (1079-1142) and Thomas Aquinas (1224-1274) and other thinkers laid stress upon the concept of natural law as the higher principles of law to be derived from reason.⁶ Again, during the Seventeen-century, the protagonists of the concept of Social Contract Theory like Thomas Hobbes (1558-1679), John Locke (1632-1704) and Jean Jacques Rousseau (1719-1778) played important role for the development of the concept of human rights. The upholders of the Social Contract theory considered human rights as the natural

rights for the reason that human rights are based upon the contract concluded by the people with the state. They explained that when men entered into contract to form political society (state) they renounced some of their natural rights, which had previously been enjoyed by them in their free state of nature, but they preserved certain basic rights, such as, the right to life, freedom and equality. These rights so preserved constituted their “natural and inalienable rights” which must be respected by the state or governor. Thus, in effect one of the purposes of the social contract was to preserve the natural inalienable rights to men and at the same time, to prevent the state from interfering with the exercise of that right by the people. In this way the concept of inalienable, natural and imprescriptible nature of human rights was established. The teachings of the social contract writers had not only strengthened and revitalized the concept of natural rights but provided it with dynamic contents. As such it exercised great influence upon the American and French revolution.⁷

In the course of the development of the concept of human rights, there are some important landmarks. The Magna Carta in England, 1215, The American Declaration of Independence, 1776, the French Declaration on the Rights of Man, 1789, the Bolshevik Revolution in Russia in 1917 etc are the main important ones. Each of these declaration, related developments and emerging institutional frameworks has made important contribution in advancing the concept of human rights. However, being product of their own time and specific circumstances, they lack totality of the concept and were narrow in their scope and their application. For instance, in the Greek political system, rights existed for only the citizens, majority population referred to as slaves were not allowed to enjoy natural rights or law. Similarly the Magna Carta of England, claimed to be the first ever landmark in the history of mankind that set limitations to the arbitrary rule and laid the foundation for the rule of law liberty, yielded certain concessions for the feudal lords but not for the common man. Again, the American Declaration, containing various rights of man did have nothing to do with black populations referred to as ‘Negro’ but only for White, Anglo-Saxon and Protestant (WASP) till abolition of slavery in America. The French Declaration proclaiming liberty, equality and fraternity were soon proving empty slogan for poor peasants and factory workers. Bolshevik Revolution

in the beginning of the last Century however went a bit further by giving emphasis on the economic and social rights in addition to civil and political rights. It emphasized that economic and social rights were as important as civil and political rights.⁸

By the turn of the Twentieth Century, different nations of the world were engulfed with new environments especially when the First and Second world Wars caused serious encroachment on the rights of nations or rights of the individuals. There arose strong feeling among leaders of the nations the need of making international instrument to work for the preservation of basic human rights at national and international levels. This finally led to the formation of the United Nations Organization in 1945 and a consequent adoption of the Universal Declaration of Human Right, 1948 containing comprehensive list of rights marked the most remarkable landmark in the process of evolution of human rights.

Meaning of Human Rights.

Human Rights may be viewed as an on going attempt to define human dignity and worth. The concept of human rights tells a detailed story of the attempts made to define basic dignity and worth of human beings and his or her most fundamental entitlements. Its full realization allows us to develop fully and use our human qualities, our intelligence, our talents and our conscience and to satisfy our spiritual and other needs. They are based on mankind's increasing demand for a life in which the inherent dignity and worth of each human being will receive respect and protection.

Human Rights are those minimum rights that every individual must have against state or other public authority by virtue of his being a member of human family. In the language of United Nations Center for Human Rights – “Human rights could be generally defined as those rights which are inherent in our nature and without which we cannot live as human beings”. DD Basu defined the concept in this way, “Human rights are those minimum rights which every individual must have against the state or other public authority by virtue of his being a member of

human family, irrespective of other considerations”.⁹ Protection of Human Rights Act 1993 has defined the term, Human Rights under section 2 (D) as follows, “Human Rights means the right relating to life, liberty, equality and dignity of the individual guaranteed by the Constitutions or embodied in International Covenants and enforced by courts in India”.¹⁰ According to the former UN Secretary General Butrous Ghali, rights that are inherent in people by virtue of being human beings, the rights that are essential for full and complete development of human personality are said to be human rights. Human Rights can thus be defined to be the rights of an individual and the interests to be protected collectively both at international and national level by the coordinated efforts with the intervention of the states in pursuance of intended objectives. The main theme of human rights movement is upliftment of human kind in general, and improvement of the lot downtrodden masses in particular.

The contemporary sense of the term of human rights has been given by Elaine Pagels that, “The idea that the individual has right; claims upon society or against society; that these rights which society must recognize, on which it is obliged to act, are intrinsic to human being”.¹¹ This definition of human rights is an improvement upon the traditional Eighteen-century definition of the Right of Man since it recognizes human rights as a claim upon or against the society. It implies three characteristic features of human rights like firstly, - human rights are said to be recognized, that means, they reside inherently in the individual human being independent of the society. Secondly, human rights are said to be inalienable natural and inherent in the sense that a holder of these rights cannot divest himself of them. Thirdly, all human beings are said to be essentially equal.

There are some basic essentials to qualify a particular right to be human rights. They are as follows: -

1. It is a right of individual or group of individuals.
2. It can only be executed in a society for and against state by individual or group.
3. These rights are inalienable and human beings are entitled to them by birth.

4. It is a permanent universal and legal concept in all spheres of life.
5. These rights are meant to uphold human dignity and equality and to set forth liberty and fraternity to all without any kind of discrimination.
6. These rights are minimum requirement for survival of mankind or human beings in societies.
7. These rights are protected and enforced by the authority of society or state at all levels.

Human rights comprise rights of individual or groups in a society in all spheres of life since inception to the last, i.e. from birth to death. They may be exercised individually or collectively. There can be no universal specific set of rights, they differ from time to time and place to place, but their applicability is universal. In a nutshell, human rights is the sum total of all rights necessary to ensure our rights to be human and it is the duty of all people and governments to create the condition headed to exercise our right to be human.¹² Human rights are those minimum set of rights of mankind available in all spheres of life to all individuals or groups of societies individually or collectively which is expected to be permanently inalienable since birth up to the last of man or society for the purposes of survival or benefit of mankind, individual or society. Human Rights in a common parlance, therefore means rights, which are essential for the dignified human existence and for the adequate development of human personality. They are inalienable for all human beings, as without them we cannot live as human beings.

The question of enjoyment of human rights fosters broadening of the concept of human rights in its meaning, dimension and manifestation. Feasibility of rights mentioned in various international human rights instruments of the initial stage of the movement made it obvious to develop a new category of rights-*the third generation rights*, which according to Justice P.N. Bhagwati, refers to effective access to;

- tangible resources to achieve their basic needs of productive and equitably paid work, sufficient nutrition, health care and hygiene, shelter, energy resources, clean water and air;

- the necessary intangible resources especially education and information to enable them better to utilize resources and to participate freely in the process of development;

- structures of production and government, to assure the fair and equitable allocation of the resources;

- facilities and services to organize themselves to participate, monitor, evaluate and review development programmes, and processes, and to hold accountable those responsible for their implementation.

As opined by Justice P.N. Bhagwati, present world society needs to be readjusted to ensure effective access to all the above opportunities for neglected and deprived section of the people so as to make the first and second generations of human rights more meaningful and enjoyable. Until and unless more emphasis is given to the developmental aspect of human rights, feasibility of civil and political rights, upon which the earlier thinkers mainly focus their attention will be questioned and challenged. Thus, for millions of starving people around the world human rights would mean freedom from unjust economic structure, freedom from starvation and freedom from deprivation of opportunities etc. In other words, the social and economic aspects of human rights as well as the real development of the poor people around the world especially of the third world countries shall be the main concern of the human rights. Thus, from this point of view, human rights means a movement that targeted to remove socio-economic maladies for proper realization of dignified existence of human beings and for the adequate development of human personality.

1.3 Process of Universalization of Human Rights.

Though, the concept of human rights, embodying the minimum rights of an individual versus his own state is believed to be as old as political philosophy yet for all practical purposes, the genesis of human rights can be traced with the formation of United Nations Organization. At the end of the Second World War, on 24th October, 1945, the United Nations Organization was established with a

purpose to bring all nations of the world to work together for peace and development, based on the principle of justice, human dignity and well being of all the people. The Charter aims at "...to encourage respect for each other's rights and freedoms..." It was also stated in the Charter that, "We the peoples of United nations determined to – reaffirm faith in the fundamental human rights, in the dignity and worth of human person, in the equal rights of men and women and of nations large or small..." thus, establishment of UN provided a practical ground for the origin of human rights in its true sense of the term. Just after the establishment of United Nations, scores of international instruments have been adopted, spelling out norms and standards to promote universal respect for, and observance of human rights and fundamental freedoms for all. Among them, the adoption of the 'Universal Declaration of Human Rights' on 10th December 1948 by the General Assembly was a milestone in the history of the development of the concept of human rights. Various rights set forth in the Declaration have such a deep and great influence upon leaders of the world till today. The Declaration sets out a list of comprehensive basic rights for every human being irrespective of their race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, which is why the Declaration has been referred to as a "common standard of achievement" for everyone in the world. Thus, it can be said that though the idea of human rights pre-date the United nations, yet it was only with the setting of this body in general and the proclamation of the historical declaration of the Human Rights that the Concept of "Human Rights" finally achieved formal, universal recognition.

The process of Universalization of human rights received a concrete success with the formation of International Institute of International Law. It was with the establishment of the Institute of International Law on the first quarter of the last century that the concept began to gain universal recognition. The Institute of International Law was a private organization whose members were elected from the authorities on international law in Europe, America and Asia. The chief aim of the Institute was 'to extend to the entire world international recognition of the rights of man'. Accordingly, a proclamation of the right of man was issued in 1929. The proclamation containing six articles prescribes the duties of every state as follows:

1. To recognize the equal rights of every individual to life, liberty and property and to accord to all within its territory the full and entire protection of this right without distinction as to nationality, sex, race, language or religion.
2. To recognize the right of every individual to the free practice, both public and private, of every faith, religion or belief, provided that the said practice shall not be incompatible with public order and good morals.
3. To recognize the right of every individual both to the free use of the language of his choice and to the teaching of such language.
4. To recognize that no motive based directly or indirectly on distinction of sex, race, language or religion, empowers states to refuse to any of their nationals, private and public rights, especially admission to establishment of public instruction, and the exercise of different economic activities, and of professions and industries.
5. To recognize that the equality as contemplated herein is not be nominal, but effective. It excludes all discrimination direct and indirect.
6. To recognize that except for motives based upon its general legislation, no state shall have right to withdraw its nationality from those whom for reasons of sex, race, language or religion. It should not deprive of the guarantees contemplated in this declaration.

The Proclamation through the above mentioned Articles clearly mentions in bold and effective terms the rights of human beings without distinction of nationality, sex, race, language and religion, to the equal right to life, liberty and property together with all the subsidiary rights essential to the enjoyment of these fundamental rights. It assures every individual his international rights and imposes on all nations a standard of conduct towards all men including their own nationals. Thus, it can be said that the proclamation of right of man made by the Institute was the first and foremost step in the process of Universalisation of human rights.

Another milestone in the Universalisation of human rights was brought about by the oppressive and brutal racial practices adopted by the Nazi regime in Germany during the Second World War. The individuals on the ground of their race

or religion were subjected to prosecution, tyranny and brutality. They were deprived of their civil and political rights. It caused global concern for the protection and promotion of human rights universally and it resulted to the adoption of the historical declaration known as The Atlantic Charter by the then President of United States, Roosevelt and the British Prime Minister, Winston Churchill. This Declaration had a profound effect on the development of human rights movement. Knowing the significance of this Declaration in the pursuit of human rights movement, L.H.Woolsey made a remarkable comment on it, "We have, therefore, in the Atlantic Charter, a statement of principles and in the Declaration a further statement of human freedoms and rights, to both of which 30 nations are committed for post-war guidance and achievements". Apart from the above efforts, International Labor Organization (ILO) have played crucial and constructive role in the development of consensus of world community in the process of Universalisation of human rights. The Philadelphia Declaration of the ILO at its 26th Session adopted, *inter alia*, the following resolution.

"All human beings, irrespective of trade, creed or sex, have the right to pursue both their material well being and their spiritual development in conditions of freedom and dignity of economic security and equal opportunity".

It was this resolution that widens the scope of human rights by giving emphasis on the economic aspect of rights. In fact, no one can deny the fact that there can be no fuller meaning of human rights without economic aspect.

The most important landmark in the course of the process of Universalisation of human rights took place in the middle of the last century. This development found expression in the Charter of the United Nations – the first international instrument which, in unequivocal terms, proclaimed, "Universal respect for, and observance of, human rights and fundamental freedom for all without distinction as to race, sex, language or religion".¹³ The Charter made promotion of these rights as one its basic purposes and obligated member states to take joint action and separate action in cooperation with the United Nations for the achievement of these purposes. Thus, the United Nations Charter ushered in a

new international law of human rights; until then question of human rights was considered to be a matter between a state and individuals within its territory – a matter of domestic jurisdiction. As such, for the first time in the history of human kind, rights were being universalized and internationalized – rights which every individual whatever one's origin could claim as a member of human society. However, it is essential to mention one thing at this point that the said Charter was not defined or specified are principles of a general in nature. Thus, there is a need to fill up vacuum between theory and practice. Hence, the next step followed, in December 10, 1948, the General Assembly of the UN adopts and proclaimed a historical declaration, 'Universal Declaration of Human Rights'. It is quite worthy to mention here that; "members states pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms".¹⁴ What is most significant about the Declaration is that it ensures political rights to all people by declaring the will of the people to be the basis of the authority of government.¹⁵ Thus, adoption of the said Declaration was the most important step in the process of Universalisation of human rights. Not legally binding, it has nevertheless become the foundation for establishing obligatory legal norms to govern international behaviour with regard to rights of individuals. To meet the problem of lack of legal sanction by the declaration, efforts were taken which resulted to the promulgation of two international covenants by the General Assembly, namely – International Covenant on Economic, Social and Cultural Rights, and International Covenant on Civil and Political Rights. These Covenants have assumed a prime place in international as the instruments that influence and at the same time judge the disregard of states and by which the conditions of individual rights in particular countries is to be assessed. Besides, over the decades, scores of other instruments dealing with specific rights – rights of stateless persons, of the refugees, of women, elimination of all forms of discrimination, and so on have also been proclaimed. Thus by the turn of the third millennium, the expression, human rights have been universally recognized and have such a deep attractiveness everywhere in the world that no political leader would simply disregarding it. However, it is essential to keep in mind that the process of Universalisation of the concept would ever stopped but will still going on.

1.4 Relevance of Human Rights in fast changing Institution of the State Power.

Human Rights have assumed significance in the present world society. Many nations in the world, are concerned with the protection and assurance of fundamental human rights in its various manifestations and dimensions. As human rights violation is a matter of individual and personal tragedy, which creates conditions of unrest sowing the seeds of violence, therefore, promotion and safeguarding of human rights is the most challenging task ahead of this era.

Framers of the Indian Constitution and leaders were also very much concerned about the need of human rights protection therefore became signatory to the Universal Declaration of Human Rights, 1948. Following the adoption of the UDHR, 1948 quite numbers of international human rights instruments are made and adopted under the UN auspice. In most of these Declarations, Conventions and Covenants India became a signatory. As per the National Human Rights Commission Annual Report 2001-2002, there are now some seventy international human rights instruments that have been adopted under the auspices of the United Nations of which India is a state party to some sixteen Conventions or Covenants.¹⁶ In an effort to make human rights more meaningful and enjoyable for the Indian citizens, comprehensive provisions of human rights have been incorporated in the Indian constitution under Part III (Article 12-35) and in Part IV (Article 36-50). Further, India is not just a signatory to these Covenants but has also made efforts towards implementing them by enacting the Protection of Human Rights Act of 1993.¹⁷

Despite various measures and efforts being taken at the international level, global situation in terms of promotion and protection of human rights is not improved much. Realization of the cherished ideals like peace, security, development and fundamental freedoms are still distant dreams for almost half of the population of the world. Extreme poverty remains a daily reality for more than 1

billion people who subsist on less than \$ 1 a day. Hunger and malnutrition are almost equally pervasive; more than 800 million people have too little to eat to meet their daily energy needs. More than a quarter of children under age 5 in developing countries are malnourished. More than 11.5 million children of primary school age do not receive proper education. Every year, almost 11 million children die that means 30,000 children die every day. Most of these children live in developing countries and die from a disease or a combination of diseases that can be prevented or treated by existing inexpensive means. Sometimes, the cause is as simple as lack of antibiotics for treating pneumonia or of oral dehydration salts for diarrhea. Malnutrition contributes to over half of these deaths. The most fatal and incurable disease like HIV/AIDS affected 39 million people around the world in 2004 and the number increased to an alarming degree.¹⁸ These are in fact true indicators of lack of basic necessities indicating denial of human rights around the globe.

The global situation marks another serious set back when the new economic policy was introduced since 1990. Globalization that was believed to bring economic improvement of the world population proved rather negative. The assertion by the protagonists of Globalization that it will accelerate progress in developing countries is also belied by the UNDP's Tenth Human Development Report (HDR), which states that, "market dominated globalization has led to the growing marginalisation of poor nations and its peoples, with growing inequality and the benefits accruing to the richest to the richest people and countries". In a message delivered by the then Secretary General of UN, Kofi A Anan on October 2003 in observance of the *International Day for the Eradication of Poverty* reminded the world community that, "How many times have we said that it (poverty) was incompatible with human dignity. But billion of people are still trying to survive... with no drinking water, health care, or access to education, still denied the jobs that would help them escape their impoverished state, and thus, still deprived of some of their most basic rights". Thus, the global situation in the event of and after the Globalization depicts no improvement for people living in developing and under-developed countries. After Globalization, the gap between

the haves and the have-nots is staggering; the richest fifth have an income 74 times that of the poorest fifth.¹⁹

Situation in India shows no positive sign towards securing basic human necessities since mid 1991 when the New Economic Reform, stressing market led development was introduced. The 36 percent of the world's 1.3 billion poor earning less than one dollar a day live in India and thus India is accommodating the largest number of world's poor.²⁰ The New Economic Policy (liberalization, privatization/globalization) under the slogan of 'let the market decides' that emphasizes market led development instead of state led development now make the situation more unsuitable for realization of various constitutional provisions under Chapter IV aiming at the welfare of the people. It is an undeniable fact that role of the state has been on the decline and in such a circumstance, the word 'socialist' which is a Preamble provision to the Constitution of India, lost its validity. The Indian Political system instead of the socialist society, has been giving more emphasis on the building up of capitalist oriented society. As a result of these trends, there grows increasing gap between the rich and the poor. Again this trend further leads to the uneven regional development, economic imbalance between rural and remote areas, acute unemployment problems and extreme poverty. This is in reality a true indicator of denial of basic necessities needed for the dignified and humane existence. In other words, various social and economic rights guaranteed under the provisions of the Indian Constitution are being denied to majority of the Indian population. Mass populations are excluded from the fruits of developments under the capitalist led economic policy. More sadly, the state institution upon which disadvantaged sections of the population seek equal justice withdraws itself from market manipulated economic activities. Therefore, what else may be expected from capitalist economic system that benefiting few people thereby denying vast majority of economic and social justice. It would be a mockery to expect socio-economic improvement of the poor people from profit driven market economy. Promotion and protection of human rights of citizens including rights of the neglected/disadvantaged population therefore is an urgent need and in this regard state institution must involve in a larger degree even in the

context of economic globalization otherwise there are obvious reasons fear of greater danger in a country like India.

Looking into the situation in Mizoram context, it is noticeable that the fundamental freedom and individual dignity enshrined in the Indian Constitution do not get its proper places. It is an alarming fact that reports of rape cases, broad daylight robbery and killings, abductions and kidnaps, violation of individual freedom, alleged corruption cases etc. are coming from various corners. In fact, human rights violations become almost everyday phenomena. More sadly, the commutative effects of the capitalist path of development brought the decay of egalitarian society that opens chances of social stratification on the basis of income, land possession, social status; paving the way for decline of close-knit homogeneous society. The new economic policy is found unfriendly to the tribal society like Mizo. Only a few ruling and propertied classes are reaping the fruits of development yet majority population are deprived chances of improvement. State intervention in every developmental programme has been on the decline whereas market led development benefiting the advantageous section of the society has been on maximum growth. In such a situation problems like unemployment, lack of proper development for rural people comprising around 80 percent of the total population of Mizoram, lack of medical facilities for neglected class, denial of gender equality, and a growing gap between the rich and the poor etc, are obvious in Mizoram. Under this circumstance, enjoyment of human rights enshrined in various international human rights instruments in general and the rights enshrined in the Constitution in particular are still a distant dream.

Keeping in mind all these harsh realities, the present study has been undertaken to bring out comments and suggestions for restructuring politico-economic power structure, to put a check on exploitative elements in agrarian structure, large scale societal disparities etc, and to ensure just and humane society where individual freedoms, human rights and civil liberties shall have concrete meaning for all citizens.

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CHAPTER – II

2.1 The United Nations Organization and the Universal Declaration of Human Rights (UDHR) containing a number of Human Rights and their explanation. 2.2 International Covenants on Economic, Social and Cultural Rights. 2.3 International Covenants on Civil and Political Rights. 2.4 Suspension and Limitations of Human Rights, 2.5 Working of the UNO in safeguarding Human Rights, Critical appraisal.

2.1 The United Nations Organization and The Universal Declaration of Human Rights (UDHR) containing a number of Rights and their explanation, Critical appraisal.

The birth of the United Nations Organization may be attributed to the monstrous violations of human rights under the Hitler Regime in Germany before and during the Second World War. Gross violation of human rights during the World War II and its disastrous effects on the world community compelled the big powers to chalk out an instrument, which would prevent the future generations from the scourge of wars and its effects on individual freedom. As demanded by the past situation, leaders of the leading nations at that time therefore took efforts to establish a new world body to promote and protect human rights that finally led

to the formation of the United Nations Organization in 1945, with one of its main purposes, “*to achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion*”. (Article 1 (3) of the UN Charter). Article 55 of the UN Charter clearly expresses the very purpose of the UN, thus, “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion” is the duty of the Organization. Under the same Article, it is also found that, “creation of conditions of stability and well being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples” Under Article 56 all members to the Organization pledged themselves to achieve the purpose set out in Articles 55 of the UN Charter.

Although the Charter of the United Nations clearly expressed affirmation and strong determination of member states to promote and protect fundamental human rights of the people in all respects, yet it does not contain clear enumeration or definitions of rights mentioned in it. This has compelled the concerned organs of the United Nations, such as, the General Assembly, the Economic and Social Council, the Commission on Human Rights and their subsidiary bodies to prepare and adopt international human rights instruments that finally gave birth to the **Universal Declaration of Human Rights, 1948**.

The Commission of Human Rights and the General Assembly of the UN gave extraordinary labour in preparing the Declaration. Initially, the Office of the UN Secretariat prepared draft declaration containing a document of 408 pages. It was supplemented by draft declarations and proposals from various countries like United States, Chile, Cuba, and Panama including India. The Draft document was considered and revised by the Commission on Human Rights in the light of comments from different countries and various sub-Commission, Specialized Agencies under the UN and non-governmental organizations. ¹ It was an arduous task for the Commission of Human Rights and the General Assembly to finely

blend together differing religious traditions, political philosophies, legal systems, and economic, social, and cultural patterns represented among the then fifty-eight member states.

The General Assembly then finally completed the task of preparing the Declaration and was adopted by it on December 10, 1948 in Paris, France without objection – 48 to 0, with 8 abstentions (Byelorussia, Czechoslovakia, Poland, Saudi Arabia, the Ukraine, the Union of South Africa, the Soviet Union and Yugoslavia) and 2 absentees (Honduras and Yemen). It is noteworthy here that though some eight members abstained from voting, they made it clear that they did not want to cast their vote against it despite their discontent with some of the provisions and hence as per the United Nations Usage, this vote of 48-0-8 is called “unanimous”.²

The Declaration consists a Preamble and 30 Articles. It is a unique document in the sense that unlike the previous fundamental laws of the 18th and 19th Centuries, it deals not only of the civil and political rights but also with the group of rights, which have become known as economic, social and cultural rights.

³

Various rights mentioned in the Declaration may be highlighted as under;

The Preamble states the importance of recognition and protection of inherent and inalienable rights of all the human beings for the maintenance of peaceful coexistence. It runs, *‘recognition of the inherent dignity and of the equal and inalienable rights of all members of the Human Family is the foundation of freedom, justice and peace in the world’*.

The first three Articles are general in nature and express the three main ideas of the 18th Century like fraternity, equality and liberty that provide philosophical assumptions upon which the Declaration is founded.⁴ They run as follows;

Article 1: *“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”.*

Article 2: *“Everyone is entitled to all rights and freedoms set forth in this Declaration, without distinction of any kind...”*

Article 3: *“Everyone has the right to life, liberty and security of person.”*

Article 4 deals with prohibition of rights against slavery and servitude; Article 5 prohibits torture and cruel, inhuman or degrading treatment or punishments; Article 6 incorporates the right to recognition as a person before the law; Article 7 provides rights to equality before law and equal protection of the law;

Article 8 deals with the right to an effective remedy by competent national tribunals for acts violating the right granted by constitution or law. Article 9 deals with arbitrary arrest, detention and exile; Article 10 deals with the right to fair and public hearing by an independent and impartial tribunal; Article 11 deals with the right to be presumed innocent until proved guilty according to the law and with non-retroactivity of the law; Article 12 forbids interference with a man's privacy, family, home or correspondence; Article 13 affirms the right to freedom of movement and residence, and the right to leave one's country. Articles 14 to 20 deal individually with diverse rights: the right of asylum, right to nationality, marriage rights, the right to own property, the right to freedom of thought, conscience and religion, the right to freedom of opinion and expression, and the right of assembly. Article 21 deals with political rights. Article 22 to 28 cover economic and social rights; the right to social security, to work, to rest and leisure, to a standard of living adequate for health and well being, to education and to participate in the cultural life of the community. According to article 28, everyone is entitled to a social and international order in which the rights and freedoms set out in the Declaration can be fully realized.

Article 29, proclaims that everyone has duties to the community in which alone the free and full development of his personality is possible. This article also deals with some of the limitations of rights mentioned in the Declaration. Article 30

provides for an important limitation of the authority of the states and of the rights of groups or persons.

The Universal Declaration of Human Rights in a true sense is a simple resolution of the General Assembly of the United Nations. It neither creates binding obligation on the part of the state to carry out its provisions, nor provides for its enforcement. However, it has such a deep impact in the world and no nations in the world would ever simply disregard the rights set forth in this Declaration. It was unanimously adopted by the General Assembly and which is why regarded as a “common standard of achievement for all people and all nations”. The significance of this Declaration is evidenced by the fact that over more than fifty years of its adoption, the United Nations and other international organizations repeatedly invoked and has been use in diplomatic exchanges between governments and also been incorporated into treaties and national constitutions and hence acquired high normative value.

As is entitled, this Declaration has universal characters. Its universality has been manifested in the Declaration itself in one way or the other and this adds its value. The Declaration itself enunciated that rights set forth in it shall be available to every human being on this earth. All articles in this Declaration begin with the words, ‘everyone’ or ‘no one’, or ‘men and women’. It means that all rights enshrined in this Declaration shall be available and enjoyable to every human being without discrimination on any grounds.

The universality of this Declaration is clearly elaborated by para 2 of Article 2, which states that no distinction shall be made on the basis of the political jurisdiction, international status of the country, or territory to which a person belongs. It means the territorial validity of this Declaration is unbounded. Thus, according to this Declaration, human rights are the rights of every human being irrespective of their social status, religion, sex, territorial status and also applicable to even non-members of the United Nations.

The Universal Declaration sets a new international standard of human rights that reflects the most profound desire of the human spirit. The adoption of the Declaration marks the first time in the human history when large majority of the delegates of various nations could reach at consensus irrespective of their natural differences.

The Universal Declaration of Human Rights, since its adoption, has been used as the very foundation of human rights instrument. It has exerted strong influence upon the framing of international instruments of human rights, international treaties and conventions. It has also exercised a significant influence on national constitutions and on municipal legislation and, in several cases, on court decisions. It has significant impact on the decisions made by the United Nations and many declarations made after the adoption of this declaration have direct bearing of some provisions of this Declaration. In fact, the Declaration has been used as a Code of Conduct or as a yardstick for gauging the degree of respect for compliance with the international standards of Human Rights.⁵

2.2 International Covenants on Economic, Social and Cultural Rights, 1966.

As mentioned earlier, rights set forth in the Universal Declaration of Human Rights are not binding in nature and also not categorically contain rights concerning about economic, social and cultural rights, hence, the member states of UN strongly felt the need of separate document in the form of Covenant which will contain economic, social and cultural rights and civil and political rights. The general Assembly of the UN by its Resolution 421 E (V) of 4 December 1950 clearly spelled out the need in this regard “The enjoyment of civic and political freedoms and of economic, social and cultural rights are interconnected and interdependent” and that “when deprived of economic, social and cultural rights, man does not represent the human person whom the Universal Declaration

regards as the ideal of free man". It was therefore, decided to form Covenant to include in it human rights concerning economic, social and cultural rights and an explicit recognition of equality of men and women set forth in the Charter of the United Nations.

The Commission of Human Rights under the UN was entrusted to prepare required human rights instrument at international level in the form of Covenant. As requested, the Commission on Human Rights under the auspice of UN, started to work on the formulation of two covenants, one on economic, social and cultural rights and one on civil and political rights since June 1952. The process of formulation and elaboration took such a long period and that only in 1966, the Covenants were finalized. Therefore, the General Assembly by a resolution 2200 (XXI) of 16 December 1966, adopted and opened for signature, ratification and accession the three instruments of human rights namely, (a) The International Covenant on Economic, Social and Cultural Rights, (b) The International Covenant on Civil and political Rights, (c) Optional Protocol to the International Covenant on Civil and Political Rights. The Covenant on Economic, Social and Cultural Rights, 1966 entered into force on 3 January 1976.

The International Covenant on Economic, Social and Cultural Rights (ICESCR) contains a Preamble and 31 Articles. The distinctive features of this Covenant as described under Article 2 are (I) that each state party undertakes to take step, to the maximum of its available resources, to achieve progressively the full realization of these rights by all appropriate means including the legislation; (II) that states parties undertake to guarantee that these rights will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, nation or social origin, property, birth or other status; and (III) developing countries may determine with due regard to human rights and their national economy as to what extent they would guarantee the economic rights to the non-nationals. (See Part II Article 2 (1)(2)(3) of ICESCR)

The Preamble of this Covenant clearly expressed that the ideal of free human beings enjoying freedom from fear and want can only be achieved if

conditions are created whereby everyone may enjoy his economic, social and cultural rights like;

1. *right to work* (Article 6)
2. *right to enjoyment of just and favorable conditions of work* (Article 7)
3. *right of workers to form and run trade unions freely subject to just limitations to protect their interest* (Article 8)
4. *right to have social security and social insurance* (Article 9)
5. *right to an adequate standard of living* (Article 11)
6. *right to own and administer property, right to the enjoyment of the highest attainable standard of physical and mental health* (Article 12)
7. *the right to education* (Article 13) and
8. *the right to take part in cultural life* (Article 15)

Economic Rights means right to have opportunities and facilities for earning livelihood in fair and just conditions established on the principle of equality and equity. It refers to the rights of human being to own, possess and manage property both moveable and immovable, and they envisage a system of social security in old age, sickness and similar circumstances. ⁶ Social Rights generally related to enhancing the well-being and standard living of all members of the society. They include access to education, enjoyment of the highest attainable standard of physical and mental health, and the right to adequate housing and food. While cultural has a variety of meanings, cultural rights generally refers to right to take part in cultural life and to freely exercise cultural customs and beliefs. Cultural rights include rights to participate in arts and recreation, and right to the expression and practice of one's cultural identity and customs. Cultural rights also include the right to benefit from scientific progress and to be free to engage in scientific and creative activities. ⁷

A number of special bodies have been established under the UN to deal with the above particular aspects of human rights. The Human Rights Committee and the Committee on Economic, Social and Cultural rights are the two main bodies entrusted to supervise the enforcement of the rights mentioned in the Covenant on Economic, Social and Cultural Rights. The UN Secretary General and

the Economic and Social Council (ECOSOC) also perform important functions in supervising and monitoring the enforcement of various rights contained in the Covenant. States Parties to the ICESCR are duty bound to make progress, observe, respect, protect and fulfill economic, social and Cultural rights set out under Part I to III of the Covenant. Accordingly, since the adoption of this Covenant, international communities have been making concerted efforts for the realization of the rights set forth in the Covenant. However, achievement in this regard is not up to the requirement vast population living in Asia, Africa and Latin countries. For them particulars of human rights concerning economic, social and cultural aspects of human life that the present Covenant gives due importance are still unfulfilled dream.

As mentioned above, despite the fact that international communities are repeatedly emphasizing the universality of human rights and giving continuous efforts to ensure people of the above rights, there still pervasive hunger and extreme poverty around the world. Enjoyment of the above rights appears to be something never to be realized for people living in sub-Saharan Africa, the region hardest hit by hunger and malnutrition. People living in this region have failed to find productive employment opportunities, agriculture has stagnated, and HIV/AIDS has taken a brutal toll on people in their most productive years.⁸

It is now suggested here that main focus may be directed towards the people of underdeveloped countries of Sub-Saharan Africa, Asian and Latin countries. Concrete and meaningful means needs to be formulated at UN or other international levels to make various human rights contained in ICESCR more accessible or enjoyable for people of poorer of the poor countries. Again it is stressed that the indivisibility, universality and interdependency of human rights especially in respect of social and cultural rights must be understood. Equal importance of two aspects of human rights likes; civil and political rights on one hand and economic, social and cultural rights on the other must be emphasized. In this regard, it is further suggested that top priority may be given to what some scholars referred it as Third Generation Rights or Right to Development. Until and unless vast population of the poor countries are developed culturally, economically

or socially what the advanced countries continuously seeking for individual freedom or political or civil rights would never have practical meaning for almost majority of the world population. It is also very important to ensure human rights on the basis on 'cultural relativism' or 'cultural specificity'. This implies that human rights must be applied and interpreted according to different cultural values. The industrialization, colonization and globalization which had great impact on the social structures and behaviours on the world's poor must be clearly understood and hence efforts may be taken to protect underdeveloped countries from imposed behaviour from the developed countries. Finally, universality of human rights need to be emphasized everywhere regardless of culture, religion, customs or ideology. Realization of the *Vienna Declaration* is an urgent necessity in the present world context, which states;

“While the significance of national; and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of the states, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms”

2.3 International Covenant on Civil and Political Rights, 1966.

Rights relating to the person and property of the individual and rights of man to participate in the affairs of the state are generally referred to as Civil and Political rights.⁹ These rights are essential conditions for a civilized life. The significance of civil and political rights has been recognized universally and hence various international human rights instruments have been developed through the UN system. Amongst international human rights instruments like Convention Against Torture (CAT), the Convention on the Rights of the Child (CRC), International Convention on the Elimination of All Forms of Racial Discrimination (CERD), Convention on the Elimination of All Forms of Discrimination Against

Women (CEDAW), the International Covenant on Civil and Political Rights (ICCPR) is the foremost important one that guarantees civil and political rights.

Similar with the ICESCR, the task of formulation of the International Covenant on Civil and Political Rights (ICCPR) was carried out by the Commission on Human Rights. Though there have been number of similarities between the two Covenants, separate covenant had been formulated for the UN was fully aware about the importance of both human rights of two categories like civil and political rights, and economic, social and cultural rights. Moreover, it was realized that there was practical difficulties in embodying two different categories of rights in a single covenant. As such the International Covenant on Economic, Social and Cultural Rights and International Covenant on Civil and Political Rights were framed and approved by the General Assembly simultaneously and adopted and opened for signature on the same date by a Resolution 2200 (XXI) of 16 December 1966, The Covenant entered into force on 23 March 1976, in accordance with Article 49. It contains a Preamble and 53 Articles.

The ICCPR covers a range of traditional civil and political rights, often referred to over simplistically as 'negative' rights, enforceable only in relation to the actions of the state. These rights include (amongst others); ¹⁰

1. *the right to life; (Article 6)*
2. *the right to freedom from cruel, inhuman or degrading treatment or punishment; (Article 7)*
3. *the right to liberty and security of persons; (Article 9)*
4. *the right to be treated with respect for dignity and with humanity, if deprived of liberty; (Article 10)*
5. *the right to freedom of movement and choice of residence; (Article 12)*
6. *the right to equality before courts and tribunals, and to a fair hearing in criminal case or law suit; to be presumed innocent until proved guilty if charge with a criminal offence; and in a determination of any criminal charge, to guarantees including the right of very person;*

- *to be informed promptly, in detail and in language the person understands of the nature and cause of the charge;*
 - *to be tried without undue delay;*
 - *to be tried in his or her presence, and defend himself or herself in person or through counsel of his or her choosing;*
 - *to have legal assistance assigned where required by the interest of justice, free of charge where the person has insufficient means to pay;*
 - *to examine witnesses;*
 - *to have the free assistance of an interpreter if he has or she cannot speak the language used in court; (Article 14)*
7. *the right to recognition as a person before the law; (Article 16)*
 8. *the right to freedom from arbitrary interference with privacy or family life; (Article 17)*
 9. *the right to freedom of conscience and religion; (Article 18)*
 10. *the right to freedom of opinion, expression and information; (Article 19)*
 11. *the right to freedom of association including the right to form and join trade unions; (Article 22)*
 12. *the right to marry and found a family; (Article 23)*
 13. *the right of children to special protection; (Article 24)*
 14. *the right to take part in public affairs, to vote and to be elected, and to have access on equal terms to public service (Article 25); and*
 15. *the right of people belonging to ethnic, religious or linguistic minorities to enjoy their own culture, practice their religion or use their own language, in community with other members of their group; (Article 27)*

Mention, however may be made at this point that rights mentions in this Covenant are not absolute in the sense that state parties to this Covenant may take measures derogating from the obligations when the public emergency threatening the life of nation exist and the existence of which is officially proclaimed. However, such measures should be exercised to the extent strictly required by the exigencies of the situation provided that they are not inconsistent with state's other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.¹¹

The two Covenants; International Covenant on Economic, Social and Cultural Rights and International Covenant on Civil and Political Rights had been ratified or acceded to by **130** states by the end of 1994.¹² Both the Covenants required each party to undertake to take steps to the full realization rights mentions in it and to ensure to all individuals within their territories the rights recognized without distinction of any kind. See (Article 2. (i),(II), (III) of ICESCR) and Article 2 and 4 of ICCPR). Therefore, all states ratified or acceded to these Covenants are bound to take every possible step for the fullest realizations of the rights included in it. It is the obligation of all the parties to implement rights contained in it and in this regard the UN and various international institutions monitor the compliance with the obligations and pursue a dialogue with governments on how to advance their implementation. In the process of realization and implementation, progress has been made and non-governmental organizations are also becoming increasingly involved. This has been, in fact, a positive trend yet looking at the real situation of the present world society; the idea of global realization of economic, social and cultural rights seems utopian.

According to the United Nations Development Programme (UNDP) *Human Development Report 1994*, 'a fifth of the developing world's population goes hungry every night, a quarter lacks access to even a basic necessity like safe drinking water, a third lives in abject poverty-at such a margin of human existence that words simply fail to describe it,' Again it is learned that more than a billion people in the world today live in poverty, and some 550 million go bed hungry each night. More than 1.5 billion lack accesses to clean drinking water and sanitation, some five hundred million children do not have access to even primary education, and approximately one billion adults remain illiterate.¹³ The situation seems not improving till today especially in relations with the human rights relating to economic, social and cultural rights. According to the recent report, extreme poverty remains a daily reality for more than 1 billion people who subsist on less than \$ 1 a day. Hunger and malnutrition are almost equally pervasive; more than 800 million people have too little to eat to meet their daily energy needs. More than a quarter of children under age 5 in developing countries are malnourished.¹⁴

It is true that there is a rapid development in the fields of technology, communications and a living standard of the good number of population of the world improved to certain extent. Increasing economic activities and new economic policies are becoming more transnational in nature and composition and in the meantime multinational corporations and financial institutions are becoming more powerful and now enjoy the power to make decisions with a global impact. All these trends no doubt benefited certain sections of the world population yet the fact remain unfortunate for much larger population that the dominant concern for all these developments is a search for profit rather than for improvement of living conditions for those in most need. There arose serious need to adjust the system of lending funds to the developing countries by world financial institutions like World Bank and IMF. RN Prasad explicitly mentions the unfair conditions laid by these institutions, "...the concept of human rights as one of the essential conditions of Good governance as laid down by the World Bank has nothing to do with a safeguard of human rights especially right to life, food, shelter, clothing and medical care of poor, hungry, unemployment, exploited and deprived masses of the developing countries including India but is a condition to obtain financial assistance from the World Bank and IMF for a carry out of projects and development works, etc. Those developing countries that do not abide by the prescription of Good Governance cannot be considered for the World Bank financial assistance help. However, a point is to be noted here that the most developing countries which violate the provision of right to an adequate standard of living (food/housing/clothing/medical care) enshrined in Article 25 of the Universal Declaration of Human Rights, 1958 and Article 11 of the International Covenant on Economic, Social and Cultural Rights are neither questioned by the World Bank/IMF nor persuaded by the UNO or the apostles of New Economic Reforms to get these basic needs made available to the poor masses. Therefore, a mere physical existence without availability of a minimum of the fundamental attributes of life does not constitute right to life. This condition is in reality worse than animal."

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In fact, certain rights which the two Covenants give due importance like, right to adequate standard of living, right to work, right to social security, right to

health, right to development, etc, still remain unrealized dream for more than half of the population of the world. Again one cannot argue that without economic, social and cultural rights civil and political rights are not feasible. Until and unless funds in terms of billion dollars that are being wasted for the invasion of weaker nations by the big powers are spend for the improvement of the living standard of the poorer people of the under-developed countries, rights mentioned in the Covenants will remain a distant dream. To achieve goals set-forth in the two Covenants, respective policy formulators when formulating social, economic and financial policies should keep in mind the necessity of these fundamental attributes of human rights to create conditions of self employment and jobs, and thereby to reduce, and ultimately to prevent poverty. Legislation and policies must be made with a main focus to address problems of those people below poverty line.

2.4 Suspension and Limitations of Human Rights.

Human Rights are not absolute in nature and are subject to suspension or limitations during abnormal situation called 'public emergency'. It means that when a state faces abnormal situations caused by external aggression, internal rebellion, civil wars or economic or financial breakdown and when it becomes impossible for the government to cope with it by adoption of normal constitutional measures, state may assume extraordinary powers which involve derogation of some of the human rights. Therefore during the proclamation of 'public emergency' as defined by the European Court of Human Rights as '*an exceptional situation of crises or emergency, which affects the whole population and constitutes a threat to the organized life of the community*' human rights may be suspended. However, certain categories of inalienable rights cannot be taken away during the imposition of public emergency.

Though some International Human Rights Treaties had a consensus on the point of non- suspendable nature of human rights during the proclamation of public emergency, yet lack general agreement on the list of non-derogable rights. The

European Convention on Human Rights, 1950 made only four lists of non-suspendable rights. The American Convention on Human Rights, 1969 listed eleven. The International Covenant on Civil and Political Rights listed seven whereas Human Rights Committee of the International Law known as the Paris Minimum Standard raised the number to 16. Despite all these uncertainties about the number of non-derogable human rights, following list may be mentioned as non-derogable human rights;

- 1) Rights to life,
- 2) Prohibition of torture
- 3) Prohibition of slavery or servitude,
- 4) Prohibition of imprisonment for breach of contractual obligations,
- 5) Prohibition of retroactive criminal law,
- 6) Freedom of thought, conscience and religion,
- 7) Recognition as a person before the law,
- 8) Rights of the family,
- 9) Rights of the child,
- 10) Rights to nationality, and
- 11) Rights to participate in the government.

Though the essentiality of suspension of human rights is not debatable for the existence of the life of the community yet due care must be taken in proclaiming public emergency, as it will have negative impact on human rights. The very foundation of derogable clause of human rights - Article 4 of the International Covenant on Civil and Political Rights, 1966 also carefully expresses, "*In times of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the state parties to the present Covenant to the extent strictly required by the exigencies of the situation, provided such measures are not inconsistent with their other obligations under the international law and do not involve discrimination solely on the grounds of race, colour, sex, language, religion and social origin.*"

2.5 Working of UNO in safeguarding Human Rights, Critical appraisal.

Establishment of UNO in 1945 created great expectations and great hope to millions of the world populations who were oppressed and denied their fundamental freedom and human rights. The policy of ethnic cleansing or mass murder of Jews under the Hitler regime in Germany before or during the World War II, the practice of colonialism that denied millions of peoples their rights of self determination and other practices which were quite detrimental for the enjoyment of inalienable birth rights of the world population, etc. brought serious concern. It is thus, just after the creation of UN with the main emphasis on achievement of international co-operation in solving international problems of economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion. (See Article 1(3) of the UN Charter), people from various corners of the world whose human rights have been denied for so long submitted their petitions to the UN seeking the intervention of UN in different alleged human rights violations.

As the situation demanded or the world's expectation compelled, the UNO right from its inception began to work with full determination for the full realization of fundamental freedoms and human rights. The UN, in fact, has done a commendable task in this regard. The incidents of human rights violations which had been regarded as municipal or domestic affairs now takes the form of international concern due to the efforts of the UN and its agencies. The Organization's prominent role in this area is carried out by a number of human rights bodies which will be mentioned below.

Human Rights feature prominently in the preamble of the UN Charter, "*... to reaffirm faith in the fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large or*

small...” In the Charter itself the human rights issue occupies a due place and moreover in addition to the human rights provisions of the UN Charter, the General Assembly adopted various international human rights instruments like- The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Optional Protocol to the Covenant on Civil and Political Rights.

In addition to the International Bill of Human Rights mentioned above the General Assembly of UN has promulgated a large number of treaties dealing with specific types of human rights violations including genocide, racial discrimination, apartheid, discrimination against women, torture, etc. These treaties had played a significant role in promoting and safeguarding human rights of the specified people. Following are some of them;

1. *The Convention on the Prevention and Punishment of the Crime of Genocide, 1948. (Entered into force on January 12, 1951)*
2. *International Convention on the Elimination of All Forms of Racial Discrimination, 1965 (Entered into force on January 1969)*
3. *International Convention on the Suppression and the Punishment of the Crime of Apartheid, 1973 (Entered into force on July 18, 1976)*
4. *Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (Entered into force on September 3, 1981)*
5. *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment, 1984 (Entered into force on June 28, 1987)*
6. *Convention on the Rights of Child, 1989. (Entered into force on September 2, 1990)*

In addition to the various international human rights treaties adopted by the General Assembly, there also exist within UN the framework, human rights bodies based on the UN Charter and International Treaties such as;

Charter bodies

Human Rights Council

Commission on Human Rights (CHR)

- Special procedures of the Commission on Human Rights
- Sub-Commission for the Promotion and Protection of Human Rights

Treaty bodies

There are seven human rights treaty bodies that monitor implementation of the core international human rights treaties:

- Human Rights Committee (HRC)
- Committee on Economic, Social and Cultural Rights (CESCR)
- Committee on the Elimination of Racial Discrimination (CERD)
- Committee on the Elimination of Discrimination Against Women (CEDAW)
- Committee Against Torture (CAT)
- Committee on the Rights of the Child (CRC)
- Committee on Migrant Workers (CMW)

Four of the Committees (HRC, CERD, CAT and CEDAW) can, under certain conditions, receive petitions from individuals who claim that their rights under the treaties have been violated.

Other UN human rights bodies;

There are several other important United Nations bodies, which are concerned with the promotion and protection of human rights. These bodies are not serviced by OHCHR and include:

- United Nations General Assembly
- Third Committee of the General Assembly
- Economic and Social Council
- International Court of Justice

Many others United Nations agencies and partners involved in the promotion and protection of human rights and interact with the main human rights bodies are as under:

- United Nations High Commissioner for Refugees (UNHCR)
- Office for the Coordination of Humanitarian Affairs (OCHA)
- Inter-Agency Internal Displacement Division
- International Labour Organization
- World Health Organization
- United Nations Educational, Scientific and Cultural Organization (UNESCO)
- Joint United Nations Programme on HIV/AIDS (UNAIDS)

- Inter-Agency Standing Committee (IASC)
- DESA (Department of Economic and Social Affairs)
- Commission on the Status of Women (CSW)
- Office of the Special Adviser on Gender Issues and the Advancement of Women (OSAGI)
- Division for the Advancement of Women (DAW)
- United Nations Population Fund (UNFPA)
- United Nations Children's Fund (UNICEF)
- United Nations Development Fund for Women (UNIFEM)
- United Nations Development Programme (UNDP)
- Food and Agriculture Organization of the United Nations (FAO)
- United Nations Human Settlements Programme (HABITAT)
- United Nations Mine Action

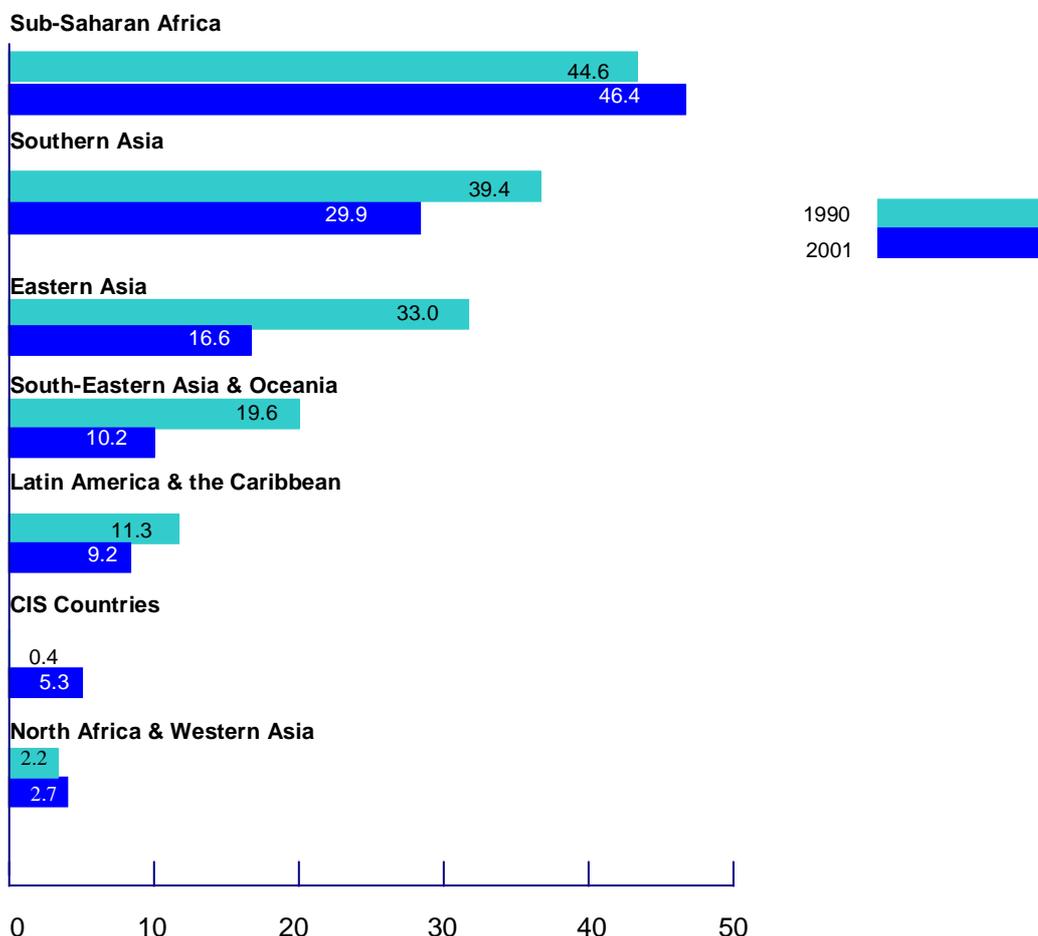
Apart from the above-mentioned bodies, the UN has been working in cooperation with Specialized Agencies for the promotion and safeguarding of human rights around the world.

Though the UN has made efforts with great commitment for the purpose of safeguarding and promotion of human rights much is still remain unrealized for millions of people around the world. Looking at the situation, enjoyment of rights enshrined in the UN Charter, the Universal Declaration of Human Rights, two International Covenants and various international human rights treaties, etc. is still a distant dream for countless people around the globe. According to one estimate, in Asia alone, some 900 million people i.e. 40 percent of the total population live below poverty line; 29 percent of the people living in urban areas and 80 percent of the people in rural areas do not have access to even safe drinking water. There are no sanitary facilities for 47 percent of the people in urban areas and for 87 percent in rural areas. Thus millions of people are trapped in a vicious circle of poverty, malnutrition and disease. Again 50 million at a conservative estimate are surviving in the streets through menial work, begging, theft and prostitution, with no proper home or family care.

In Asia, Africa and Latin America, 14 percent of the children die within a year of their birth because of lack of medical facilities and necessary nutrition. Among those who survive, nearly 40 percent do not ever get a chance to go to primary school, 68 percent do not move up to secondary school and more than 90

percent do not make to higher studies level. There is no question of parks, playground or other recreational facilities for them. Open rough fields, if available nearby, or narrow dingy streets, serve as their only playgrounds. They do not know the better or more enjoyable life for them. Moreover, an alarming number of children are subjected to forced labour and exploitation. In Fact, child labour is a common phenomenon in almost all countries of the Third World. ¹⁶ According to the **Millennium Development Goals Report, 2005**, more than 1 billion population of the world subsist on less than \$ 1 a day, more than 800 million people are affected by hunger and malnutrition.

Graph showing Proportion of people living on less than \$1 a day, 1990 and 2001 (Percentage)



During the 1990s, extreme poverty dropped in much of Asia, fell slowly in Latin America, changed little in Northern Africa and Western Asia, and rose and then started to decline in the transition economies. But in sub-Saharan Africa, which already had the highest poverty rate in the world, the situation deteriorated further and millions more fell into deep poverty.

Source: The Millennium Development Goals Report, 2005

Due to lack of pragmatic and forward-looking approach to diseases like malaria and HIV/AIDS, affected more people everyday. By the end of 2004, an

estimated 39 million people were living with HIV. Globally, 4.9 million people were newly infected with HIV in 2004 and 3.1 million died. Malaria is attacking the poorest and defenseless countries, affecting estimated 350 million - 500 million people a year and 90 percent of the 1 million malaria deaths each year occur in sub-Saharan Africa. ¹⁷

Looking at the deteriorating situation of the poorer countries in terms of denial of basic attributes of human rights like shelter, medical facilities, food and clothing, proper education, gender equality, economic justice, etc it is now a challenging task ahead for the UN to take realistic measure targeted to meet the needs of the people of the poor countries. So long as millions of people around the world are lacking these facilities feasibility of the civil and political rights enshrined in various international human rights treaties and instrument will still be questioned. What the UN has been doing while different kinds of human rights violations are taking place in the form of arbitrary arrests, long term detention without trial, political disappearances, torture, summary executions, enforced disappearances and abuse of psychiatry for political end etc in a larger part of the world ?

Again, the relevance of UN, which aims to achieve mutual relation among the states, is at stake in the event of invasion of Iraq by the Bush Regime in the early stage of the last decade. Did Operation Liberation launched against the Saddam Administration really set free the Iraqi from the terror ? It rather appears now that innocent civilians are killed or tortured everyday by the US troops. Due to acute inhuman behaviour of the US troops towards the civilian, Prime Minister of Iraq Nuri Kamal Al-Maliki is quoted denouncing the US troops operating in Iraq thus, "They (US troops) crush them (civilians) with their vehicles and killed them just on suspicion. This is completely unacceptable." ¹⁸ How many innocent people have lost their lives in Iraq by indiscriminate firing and bombing by the US troops just on the ground of the so-called excuse " *By mistake*". Again it is more unfortunate to learn the conditions of the detainees at Guantanamo Bay in eastern Cuba where hundreds of prisoners were held by the US administration just on ground of suspected terrorists. No one including lawyers were not permitted to visit their relatives or clients. Truly, detainees are denied what the UN Charter or the

International Covenant on Civil and Political rights guaranteed to everyone the right to equality before law or right to impartial or free and fair trial. In all these situations what role has been taken by the UN to stop these rampant violations of human rights or does it make itself as a silent watchdog just to please the Western nations. Rasul, freed British inmate of Guantanamo detention center accused the harsh practice of the center as saying, "Beaten on a regular basis, taken for interrogation, shackled to the floor in a very stressful positions and left there for hours and hours". He was detained there for two and half years on ground of accusation of being member of Al Qaida. During his stay in the detention center he was denied communication with outside world, no access to lawyers and right has nothing to do with the center. ¹⁹ Torture, inhuman or degrading treatments are widely rampant not only in the Guantanamo Bay but also in different parts of the world. Mere discussion on human rights violation or routine way of deliberation and a mere expression of condemnation of these practices at the UN forum now proves futile. Until and unless UN has been equipped with realistic jurisdiction over the whole world to cope with all these kinds of human rights violations, denial of basic human rights will remain widely happen.

Again so long as unequal trade relation between the rich and the poor countries, economic exploitation of the poor countries by the rich through world financial institutions like World Bank, International Monetary Fund, unjust representation of the world nations at UN, racial armament among nations etc are still flourishing in the world, grim human rights situation will never be improved. According to one account, more than 3 billion dollars is spending in a day for armament. Around 16 billion-dollar spent by the industrially advanced countries for maintenance of cattle bearing to obtain juicy beef every year. Had a least of this much is used to meet the needs of hungry children in the developing countries or spend it for the eradication of poverty, shelterlessness, diseases, etc., in poor countries of Africa and Asia, human rights will become meaningful or enjoyable. It is thus, an urgent and inevitable challenge for the UN to make all the rights set-foret in the Declarations and Treaties. Despite UN successful efforts in areas like removal of policy of Apartheid in South Africa, tremendous contribution for world peace in war or domestic conflicts in the form of Peace Keeping Mission,

significant effort to halt spreading of HIV/AIDS in Asia and Africa, adoption of the last decade as “International Decade for Human Rights Education”, much of the rights enshrined in various international human rights instruments are still unrealized. The human rights culture remains a distant dream for the world society. It is, therefore, an unavoidable task for the UN to go ahead to fulfill the obligation enjoined upon it by the world community especially in the field of safeguarding and promotion of human rights.

The reasons for not fulfillments/implementation of rights enlisted in various international human rights instruments may be briefly stated as under;

Firstly, there is a wide gap between theory and practice on human rights issue. Every nation, member and even non-member expresses their concern about the need and commitment of human rights of their respective citizens yet it is the state that practically violates the rights of people. In other words, states are interested in promoting and protecting human rights of their people in principle only but practically their commitment for human rights culture proved futile. Secondly, lack of sincerity among nations in implementing human rights is another obstacle. Members to the UN and to various International Human Rights Treaties are obligate to make report to UN Bodies such as the *Commission on Human Rights*, the *Sub-Commission on Prevention of Discrimination and Protection of Minorities* and the *Commission on the Status of Women* etc. The UN formulated a systematic arrangement for Bodies concerned with human rights to provide a continuing supervision of the realization of international human rights standards under a general system of periodic routine review of information received from member states and from inter-governmental and non governmental organizations. There are a number of special bodies like the Committee on the Elimination of Racial Discrimination, the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Discrimination Against Women, the Group of Three and the Committee Against Torture devoting full time and attention to monitoring the implementation of the provisions of human rights treaties and conventions. The problem in this connection is that member states fail to perform reporting obligation and even if furnished it they often did so overdue.²⁰ This is a clear indication that member states to the UN and various international

human rights Treaties lack sincerity in implementing provisions of human rights that seriously flawed the instruments. Finally, Structural Defects of the UN is the main obstacle for the problems of non-realization of various provisions international human rights instruments. The UN most effective organ-the Security Council is composed of Five permanent members and non permanent members. The veto power system greatly contributed for ineffective functioning of the body itself. European dominated permanent members who are equipped with veto power in many occasions decided for the action, which are very much detrimental for human rights protection. For this reason, the United States launched invasions causing human rights violations of the defenseless people. Ironically all these happened under the umbrella of UN. Therefore, Washington administration that claimed herself as the champion of human rights became a sheer violator of human rights of the weaker nations. In all these incidents, the UN can do nothing but used to remain as a mere silent spectator of the human rights violation.

Some suggestions may be made as follows;

1. More emphasis may be given towards realization of the economic, social and cultural rights over the western favoured human rights aspects like civil and political liberties. The right to development or third generation rights that took a concrete form since 1970 must be emphasized especially under the New International Economic Order. It is thus essential to codify this category of human rights by virtue of the fact that collective need for national progress has priority over individual rights. Until and unless people affected by extreme poverty are liberated from lack of basic human necessities required for dignified life, feasibility of first and second-generation rights proved futile.

2. Concerted efforts need to be given for the fulfillment of The Millennium Development Goals deriving from the United Nations Millennium Declaration adopted by 189 nations in 2000. The Declaration constituted an unprecedented promise of the world leaders to address, as a single package, peace security, development, human rights and fundamental freedoms. Keeping in mind the interconnectedness of all these ideals and objectives of the Declaration aiming at halting extreme poverty; to halting the spread of HIV/AIDS affecting

people everywhere from New York to Nairobi to New Delhi, it is an avoidable task for world communities to give sincere effort to achieve objectives set forth in the Declaration. Kofi A Annan, the last Secretary General of UN rightly remarked challenge thus, “Let us be clear about the costs of missing this opportunity; millions of lives that could have been saved will be lost; many freedoms that could have been secured will be denied; and we shall inhabit a more dangerous and unstable world”.²¹

3. It is suggested that Structural Reform of UN may be made to remove the main obstacle for realization of various provisions international human rights instruments. The composition of the most effective organ-the Security Council may be enlarged in order to make the organ more true representatives of world communities. This will enhance the functioning of the organ for the realization of various international human rights treaties and conventions. The UN presently functioning as per the dictate of Washington administration may be giving full attention to address the basic requirements of the poorer of the poor countries.

4. Dissemination of human rights through systematic education is an urgent need. Recognizing the importance of awareness on human rights, the United Nations give the message-‘know your rights’. In fact the first sentence of the Preamble of the UDHR states that recognition and respect for human rights is the ‘foundation of freedom, peace and justice in the world’. Article 26 (2) of the same Declaration says that, “education shall be directed for the full development of the human personality’. Human Rights Education is essential because only the people who are aware of their rights can ensure that their rights will not be trampled on. Learning about one’s own rights builds respect for the rights of others and gives confidence to assert them.²² Education on human rights making individual conscious of the basic and inalienable rights of others, regardless of sex, language, religion and other social and economic condition need to be disseminated to make a person more responsible citizen not only for his own country but of the world. Therefore, education aiming at better understanding of the whole concept with its implications and ramifications need to be introduced to education at all stages.

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CHAPTER – III

3.1 Provisions of Human Rights in the Indian Constitution and their Implementation to Protect the Human Rights of the Weaker and Minority Sections of the Indian Society, 3.2 National Human Rights Commission; Structure and Working, 3.3 Provisions of The Protection of Human Rights Act, 1993. Evaluation of their Implementations.

3.1 Provisions of Human Rights in the Indian Constitution and their Implementation to Protect the Human Rights of the Weaker and Minority Sections of the Indian Society

Human Rights and the Indian Constitution.

While the making of the Indian Constitution was on the process, on 10th December 1948, the General Assembly of the United Nations adopted a historic document, 'Universal Declaration of Human Rights'. India being an original member of the UN, voted for the adoption of the Declaration. The Declaration exerted heavy influence upon the framers of the Indian Constitution, hence they incorporated in the constitution substance of most of the rights proclaimed and adopted in the Universal Declaration of Human Rights. Truly, the framers of the Indian Constitution were aware about the humiliation and discrimination suffered

by the Indians at the hands of the British Rulers and consequent violations of the human rights of the Indians by the British and therefore pledged to draw up a Constitution wherein shall be guaranteed and secured to all its people of India, Justice, Social, Economic and Political, Equality of status, of opportunity and before the law, freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality wherein adequate safeguards would be provided for the minorities, backward and tribal areas and depressed and other classes. Accordingly, in the new Constitution of India, most of the human rights that are enshrined in the Declaration of 1948 are incorporated in the form of Fundamental Rights and Directive Principle of State Policy under Part III and Part IV respectively. However, the Constitution of India is marked by its absence of the words 'human rights'. But this does not mean that the Indian Constitution does not recognize and not given effect to the human rights, it rather made them enforceable under Chapter III (the Fundamental Rights). Truly, the Constitution that came into effective from 26th January 1950 was the product the Indian National Movement, a movement to regain rights, which the Indians were denied for so long.

The Preamble of the Indian Constitution, as remarked by Thakur Dass Bhargawa is, '*the most precious part of the Constitution, the soul and the key to the Constitution,*' firmly recognizes basic human necessities for the meaningful and dignified life. ¹ The Preamble to the Constitution which are really the aims and objectives of the Indian Constitution reads as under:

"We, ***the people of India***, having solemnly resolved to constitute ***India*** into a ***Sovereign, Socialist, Secular, Democratic Republic*** and to secure to its citizens;

Justice, social, economic and political;

Liberty of thought, expression, belief, faith and worship;

Equality of status and opportunity; and to promote among them all;

Fraternity, assuring the dignity of the individual and the unity and integrity of the nation.

In our Constituent Assembly, on this **twenty-sixth day of November 1949**, do hereby **Adopt, Enact** and to give to ourselves this Constitution.” (The words, ‘Socialist’ ‘Secular’ and ‘Integrity’ were added to it by the 42nd Amendment 1976 to the Constitution.)

Thus, there is no hesitation to remark the whole text of the Preamble as principles or commitment of the Indian state, which ensures and guarantees basic human rights to all the citizens.

Realization and observation of human rights involve some preconditions. Conditions that are essential for the full realization of human rights are specifically contained in the Preamble to the Constitution of India. It is specifically mentioned in the document that the Indian themselves resolved to constitute India into a Sovereign, Socialist, Secular, Democratic, Republic. The people of India proclaim that India will be a sovereign state, which signifies that India was no longer under the control of foreign nation.

Another important foundation of human right is again found in the Preamble. The Preamble mentions that India is a Socialist State, the implication of which is that India is committed to socio-economic justice, which is to be secured by the state through the democratic process and organized planning. India stands for achieving the socialistic goals of social, economic equality, public welfare and development. In this connection mention may be made about the economic trend of Indian State. Despite the Preamble provision to the Constitution, India has never been a socialist state. The Indian political system instead of the socialist society, has been building up a capitalist oriented society, which has led to dichotomous growth since independence. Therefore, the word ‘*socialist*’ in Indian context is rhetoric, vague and irrelevant.²

Secularism is another important essential condition for the observation and enjoyment of human rights. The framers of the Indian Constitution were fully aware of the experiences of the Indian under the foreign rule that denied religious freedom. Accordingly the term “Secularism” implying equal religious freedom was

included in the Preamble. Religious freedom is an inalienable right of all persons and for that matter formed one list of rights among others. Democracy is another important pre-requisite of human rights enjoyment. Proper enjoyment of human rights cannot be imagined as was experienced under the Hitler's dictatorial regime in Germany. Only under the democratic system of administration, people can exercise certain rights like, adult franchise, right to contest election, right to hold public offices, right to form associations and the right to criticize and oppose the policies of the government. In other words, it can be said that democracy ensures enjoyment of human rights. The Preamble again clearly states that India is a democratic state. The authority of the government rests upon the sovereignty of the people. For the enjoyment and realization of human rights, the Constitution, therefore laid down the system of parliamentary form of Government under which citizens can exercise democratic rights.

Proper maintenance of Justice among the people is an essential ingredient of human rights observation. Justice in all its three dimensions- social, economic and political- for all the citizens is to be secured. The Preamble to the constitution again expressed the commitment of the Indian state to secure Justice among the people. Social dimension of justice means the absence of socially privileged classes in the society and no discrimination against any citizens on grounds of caste, creed, color, religion, sex or place of birth. In fact removal of the very stumbling block of human rights enjoyment like discrimination on certain grounds is the main objective of the Indian Constitution. For this purpose the constitution grants the Right to Equality to all its citizens and makes untouchability a crime, and grants special protection to the weaker sections of the society for securing their equality with others. Again the Preamble seeks to secure economic justice and for which end a separate part of the constitution, i.e., Directive Principle of State Policy has been included in the Constitution. For the realization of the political justice, every citizen is granted with equal political right, which enables all the citizens to take part in the administration through the exercise of voting right.

A provision for liberty is another important condition for the full enjoyment of human rights. Liberty is a vital necessity for the fullest development of mind of the

individual and it is the condition of worth living. Without individual liberty, we cannot imagine human right a reality. The Preamble expressly declares liberty to be the second cardinal objective to be secured by the Indian state.

Equality, one of the most important ingredients of human rights occupies a due place in the Preamble. It has been described in terms of its two variables like equality of status and opportunity. The first variable implies equality of all people before the law and the law of the land will make no discrimination on grounds of sex, religion, race, caste, creed, residence, etc. Thus, as per the Preamble, all citizens must be provided with adequate opportunities for full development.

Fraternity is another essential condition for human rights enjoyment. There must be a feeling of spiritual and psychological unity among the people so that dignity of all the people will be acknowledged. Only when the dignity of human being is recognized, there is a scope for the enjoyment of human rights. The founding Fathers of the constitution, therefore, specified in the Preamble that free India should promote Fraternity assuring human dignity, unity and integrity of the nation. The similar expression is also found in the Magna Carta of human rights, "Universal Declaration of Human Rights" (1948), which declares that, "*All human beings are born free and equal in dignity and rights*". Thus, it can be safely said that the Preamble to the constitution of India is an instrument of human rights that assured and guaranteed justice, liberty, equality and fraternity to all the citizens.

The Fundamental Rights, which are contained in Part III of the Indian Constitution, are the reflection of the dignity of individual and they are the basic rights of all the people against the state. Rights of all human being enlisted in this Part are fundamental in the sense that they have been incorporated in the fundamental law of the land and are justiciable rights enforceable by the courts and are available to all citizens. They are very essential for the human existence as nicely put by Laski that "*Rights are those conditions of social life without which no man can seek to be himself at his best*" and hence the Fundamental Rights listed in Part III of the Constitution are necessary conditions for the fullest development of human personality and without them we can not live a meaningful and dignified

life. For this reason it can be said that the Fundamental Rights of the Indian Constitution are the provisions for the protection and promotion of human rights. Human Rights in its political and social dimensions contained in Fundamental Rights Chapter are as follows: -

1. Right to Equality. (*Articles. 14,15,16*)
2. Right to Freedoms, viz, (*Article. 19*)
 - (i) Freedom of Speech and Expression,
 - (ii) Freedom of Assemble peacefully and without arms,
 - (iii) Freedom to form Associations or Union,
 - (iv) Freedom to move freely throughout the territory of India,
 - (v) Freedom to reside and Settle in nay part of the territory of India, and
 - (VI) Freedom to practice any profession or to carry on any occupation, trade or business.
16. Right to Life and Personal Liberty, (*Articles. 20,21,22*)
17. Right to Freedom of Religion, (*Articles. 25,26,27,28*)
 - i. Cultural and Educational Rights, (*Articles. 29,30*)
 - ii. Right to Property. (The 44th Amendment has deleted this right and re-enacted it in Art. 300 A, as a constitutional right). (*Article.31*)
 - iii. Right against Exploitation and (*Articles. 23,24*)
 - iv. Right to Constitutional Remedies. (*Article. 32*)

It is, therefore clear from the above that the rights listed under the Fundamental Rights are the same with those guaranteed in the Charter of Freedom of the United Nations. Yet, it may be essential to mention here that rights mentioned in the Chapter of Fundamental Rights are not absolute rights and especially Art 19 that guaranteed six freedoms are to be suspended during the proclamation of 'National Emergency' under Article 358 of the Indian Constitution. Again, Article 359 (1) mentions about the suspension of Article 32, which guaranteed right to constitutional remedies. Various limitations and restrictions in the name of national security, interest of the nation, reasonable or genuine etc are put against the fundamental rights. However, rights like right to life and liberty

cannot be suspended even during the proclamation of national emergency. ³ The Executive cannot deprive a person of his life or liberty without the authority of law.

A Chapter on Fundamental Rights mainly deals about the civil and political rights. Rights without economic and social concern are incomplete and in fact, enjoyment of human rights without economic and social dimensions is not imaginable. To make rights mentioned in Chapter III more feasible, a number of important economic and social rights, such as right to work, rest and leisure, education and social security etc are enshrined in the Directive Principles of State Policy under Part IV of the Indian Constitution. Cultural, Social and Economic Rights guaranteed to the citizens under the Directive Principle of State Policy are as follows: -

1. Right to adequate means of livelihood. (*Article 39 (a)*).
2. Right against economic exploitation. (*Article. 39 (b)*).
3. Right of both sexes to equal pay for equal work. (*Article. 39 (d)*).
4. Right to work. (*Article. 41*)
5. Right to leisure and rest, and
6. Right to public assistance in case of unemployment, old age, sickness, and the like. (*Articles. 42,43,44,45,46,47, 48,49,50,39(a), 51 etc.*

One of the prime purposes of this part of the Constitution is to establish a welfare state. Article 38 provides that the state shall strive to promote the welfare of the people by securing and protecting social order in which justice, social, economic and political- shall inform all the institutions of national life. The state will strive in particular to minimize the inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities. Article 39 specifically mention that the state shall direct its policy towards securing, (a) adequate means of livelihood to all citizens (mentioned above), (b) a proper distribution of the material resources of the community for the common good, (c) the prevention of concentration of wealth to the common detriment, (d) equal work for equal pay for both men and women, (mentioned above), (e) the protection of strength and health of workers and avoiding circumstances which forces citizens to enter evocations

unsuited to their age or strength and (f) the protection of childhood and youth against exploitation or moral and material abandonment. Though the Directive Principles of State Policy has been criticized for its non-justiciable nature yet no one can deny its importance because it is a direction for the state to bring about necessary conditions which are very essential for the meaningful dignified life and for that matter quite important for the human rights enjoyment and for this reason it can be compared with the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on 16 December 1966, to which India also was one of the signatories. Therefore, as mentioned earlier, though there is no communicate mention of the term human rights in the Constitution, the Constitution of India has incorporated human rights in a big way in the form of Fundamental Rights and Directive Principles of State Policy. While the former incorporates civil and political rights, the latter incorporates the economic, social and cultural rights.

Besides the Fundamental Rights and Directive Principles of State Policies, there are some other provisions concerning human rights in the Indian Constitution. Article 265 lays down that, "*No taxes shall be levied or collected except by authority of law*". This implies that a person has a right not to be taxed except under a law. Similarly, Article 301 guarantees freedom of trade and commerce throughout India. Article 300 (A) guarantees that "*No person shall be deprived of his property save by authority of law*". Again, there still another important provision for the enforcement of human rights under Article 226 which empowers the High Courts to issue to any person or authority or government within its territory, directions, orders or writs or any of them, for the enforcement of any of the fundamental rights. Constitutional safeguards for the weaker sections of the society is also found in Article 244 that provided for the special kind of administration for the Scheduled areas in the states of Andhra Pradesh, Bihar, Gujarat, Himachal Pradesh, Maharashtra, Orissa and Rajasthan and administration of Scheduled Tribes in some states of the northeastern states like Assam, Meghalaya, Tripura and Mizoram. These provisions of the Fifth Schedule and Sixth Schedule to the constitution of India are formulated with the goal to protect the interests and welfare of the weaker sections of the Indian Society and the

objectives of these provisions are very similar with the ideals of human rights movement around the world.

Implementation of the Human Rights provisions of the Indian Constitution.

The question now arises that whether the Indian state has been successful in implementing various provisions of human rights to protect the human rights of the weaker and minority sections of the Indian society. But it seems rather difficult to give affirmative answer to this question. There is no doubt that the Indian state rights from the beginning has been trying to remove poverty, unemployment, monopolization of wealth, socio-economic inequalities, and concentration of means of production and distribution, through governmental policies, organized planning and economic reforms. Amongst other measures taken by the Indian state, following are some of them;

1. India has initiated the process of all round socio-economic-industrial-technological development through organized planning. The five Year Plan was initiated since 1952 and through this programme India has secured several successes in the industrial and technological spheres.
2. Zamindari System was abolished and other Land Reforms were introduced for the realization of socialistic goals. Several steps have been initiated for rural development. Programmes like IRDP, NREP, JRY, Food for Works etc are being implemented in this regards.
3. Nationalization of Life insurance, banking and General insurance was done by the Indian Government during 1970's. However, changing has been made towards privatization in many fields.
4. Bonded Labour has been legally eliminated.
5. Several Labour welfare laws have been passed and implemented.
6. Special steps have been taken to protect the weaker section of the society.
7. Provisions for equal pay for equal works to both men and women have been incorporated in law.
8. Constitution of some National Commissions like Minority Commission, Tribal Welfare, Scheduled Caste and Scheduled Tribes Commission,

Women Commission etc are remarkable steps taken by the Government of India.

9. Various welfare schemes for the welfare of the old age people, disabled persons, destitute and mentally retarded etc have been implemented.
10. Social Justice and Equality continue to be the basic guiding principle of the Indian Administration both at the Union and State levels.

The Constitution of India is suffused with unadulterated commitment to the equality of status and the responsibility of the state to preserve, protect and assure the rights of minorities in the matter of linguistic, religion and culture. That is why our National leaders have emphasized the doctrine of unity in diversity.⁴ Enforcement of constitutional provision that ensures right to equality is the main concern of Courts in India. The Supreme Court in one of its pronouncements stressed the sentiment that;

“We the people of India have given to ourselves the Constitution which is not for any particular community or section but for all. Its provisions are intended to protect all, minority as well as majority communities... We conceive, the duty of this Court to uphold the fundamental rights and thereby honour the sacred obligation to the minority communities who are our own”

The Court further stressed that;

*“The purpose of law in plural societies is not the progressive assimilation of the minorities in the majoritarian milieu. This would not solve the problem; but would vainly seek to dissolve it”*⁵ There were various instances where the supreme Courts and High Courts had successful intervention in the state administration for the realization of various constitutional measures assuring equality of all sections of the community irrespective of religion, economic or social status.

Despite all these significant steps taken during the past 50 years, it is an undeniable fact that poverty, unemployment, economic underdevelopment, illiteracy, socio-economic inequalities continue to exist in the Indian society.

Planning has not produced the desired results and the progress made in this regards has not been satisfactory. India's GNP per capita continues to be low. Public Sector, the intended mainstay of socialist economy, has failed to produce the desired results. It has failed to generate surplus wealth to increase the public sector savings and capital formation.

Failure to get the desired ends has affected the Indian economic policy since 1991 which resulted to the opening of free economic competition that gives emphasis on economic liberalization, privatization and globalization (LPG) in the Indian society. Again neither this New Economic Policy does not produce success for the realization of various human rights provision enshrined in the Preamble or the Directive Principles of state Policy nor remove social and economic inequalities, regional imbalances, labour unrest, price rise, slow growth rate, low per capita income. Poverty and hunger remain the major problems for the underprivileged or deprived section of the society that formed majority of population in India. To one estimate, one third of the world's estimated 860 million people go to bed hungry in India in times of plenty. More than 200 million people, nearly 25 percent of our populations are not having two square meals a day. India is a home to 29 percent of the world's chronically hungry. So long as poverty, malnutrition, unemployment remain a reality for more than 25 percent of the total population of India, feasibility of numerous human rights contained in the provisions of the Constitution will be questioned and the cherished objectives and ideals enshrined in the Preamble remain meaningless. Despite various schemes launched by the successive governments, situation remained unchanged and denial of basic human rights still rampant in this country. These socio-economic maladies in fact violate both human rights and the socio-economic provisions of the constitution. ⁶ Therefore, the so-called New Economic Policy instead of improving human rights situation in this country rather widens a gap between the rich and the poor. The wretched socio-economic conditions of the disadvantaged, deprived, vulnerable, weaker sections and the poor women of the Indian society remained unchanged.

3.2 National Human Rights Commission; Structure and Working.

As mentioned earlier, India had been an original member to the United Nations. India not only a member to the UN but also has become a party to various international Covenants, Conventions and Declarations of human rights. However, becoming a mere member to human rights declarations and mere incorporation of human rights provisions in the Constitution do not serve the need for effective protection and promotion of human rights in India. This necessitates the Indian Government to take initiative for the legislation of new laws to meet the growing appeal from within and outside for the formation of any institutionalized organ to work for the cause of human rights. The Government of India, therefore, introduced the Human Rights Commission Bill in the Lok Sabha on 14th May 1992. The President of India on 28th September 1993 promulgated the Protection of Human Rights Ordinance 1993. The Protection of Human Rights Bill was passed by both the Houses of Parliament and it came on the Statute Book as the **Protection of Human Rights Act, 1993** (10 of 1994). The Act came to be enacted in January 1994. The main objectives of the Act is to provide for the constitution of the National and State Human Rights Commission and Human Rights Courts for better protection of human rights and for matters connected therewith or incidental thereto.

The Act states that, *“The Central Government shall constitute a body to be known as the National Human Rights Commission to exercise the powers conferred upon, and to perform the functions assigned to it, under this Act”*.⁷ In exercise of this power the Central Government constituted the National Human Rights Commission on 12 October 1993 and the former Chief justice of India Mr. Ranganath Misra got the privilege to be its founder Chairman.

The Commission is consisting of (a) A Chairperson, who has been a Chief Justice of the Supreme Court (b) one Member who is, or has been a Judge of the Supreme Court, (c) one Member who is, or has been, the Chief Justice of High

Court; (d) two other Members having knowledge or practical experience in matters relating to human rights.⁸ The appointment of the Chairperson and other members of the NHRC is made by the President of India for a term of five years from the date on which he assumes the office or until he attains the age of seventy years, which may be earlier. The appointment of Chairperson and members of NHRC is made by the President on the recommendation of high-powered Committee.⁹ The Commission includes the Secretary-General who is the chief executive of the Commission exercising such powers and discharge such functions as the Commission delegates him and Police Investigative Officers, the rank of Director General of Police and other administrative, technical and scientific staffs. The Headquarter of NHRC is at Delhi, the capital city of India.

The National Human Rights Commission, right from its inception in 1993 has been working remarkably with its well-identified objectives like: viz,

1. Inquiry into complaints;
2. Review of laws, implementation of treaties and other international instruments on human rights;
3. Improving jail conditions;
4. Promotion of human rights literacy and awareness among various sections of the society; and
5. Undertaking and promoting research in the field of human rights.¹⁰

Basic objective of the Commission is to create a culture of human rights throughout the country. However being an investigatory and recommendatory body, it can not act as accusatory or judicial body and hence its main functioning has been confining on making of advice to the government and submits its reports and recommendations for the future based on the material available. For better analysis of the working of National Human Rights Commission, it would be essential to mention its major operations in some fields.

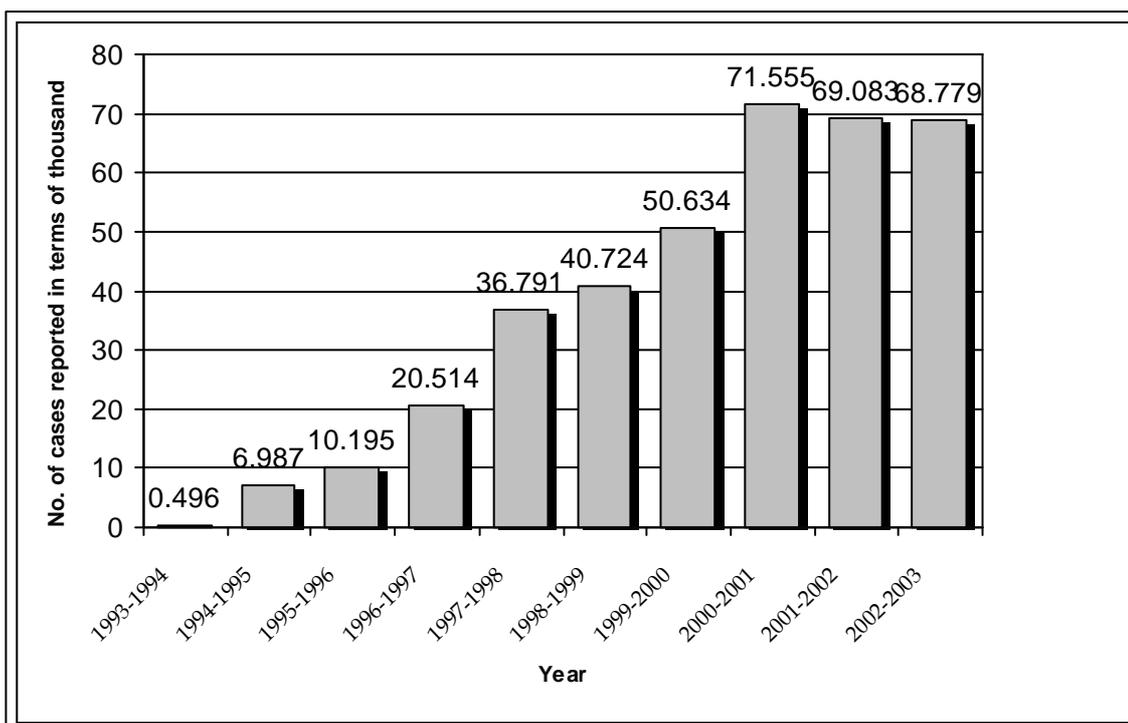
The foremost important function of NHRC is to entertain complaints and take necessary inquiry to redress the victims of human rights violation. The functioning of NHRC in this regard is quite effective and has established its credentials as a statutory independent body within a short span of period. There

was a growing awareness in the society about the human rights and the people want to seek redressal of various kinds of abuses including child abuse and custodial deaths. The daily average of complaints received by the Commission is quite high. The effective performance and prompt response from the Commission has encouraged people to protect their human rights through the Commission. "Immediately after the Commission was set up, it issued directives to all the State governments to ensure that incidents of custodial deaths or rape must be reported to the Commission within 24 hours by the District Magistrates/Superintendent of Police, failing which the Commission would presume that there was an attempt to suppress the incidents. Following these instructions a number of reports have been received from different states in respect of deaths, which have occurred in police or judicial custody. These reports are studied by the Commission and action recommended against officers found, prima facie, guilty.

One very significant development in this connection has been a higher level of awareness among authorities in the government to initiate action against officials along with reports to the commission on incidents of custodial deaths". During the first year of its existence, the Commission received 1660 numbers of complaints from different states of the Indian Union and the complaints were varied from custodial deaths, disappearance, illegal detention, false implication, police excesses, indignity to women, kidnapping, atrocities on SC/ST by others, etc. In the following year the number of complaints received has gone up to 4081. Over the past two-and-half years of its existence, the NHRC has received nearly 17500 complaints, During the period between October 1993 to March 2003, the Commission has registered a total of 3,75,758 cases, of which 3,65,995 had been taken up for consideration. ¹¹ By any yardstick, this picture depicts that the caseload of the Commission is quite high and is not an exaggeration to say that the workload of the Commission is far greater than any other Human Rights Institutions anywhere else in the world or any other National Commission having a statutory basis in this country.

Table showing No. of Cases reported to NHRC during the period 1993-2003

Year	1993-1994	1994-1995	1995-1996	1996-1997	1997-1998	1998-1999	1999-2000	2000-2001	2001-2002	2002-2003
No. of Cases reported	496	6,987	10,195	20,514	36,791	40,724	50,634	71,555	69,093	68,779



Source: National Human Rights Commission Annual Report, 2002-2003

To cite a case, mention may be made about the successful intervention of the Commission with special reference to “Alleged custodial death of Shri S.Kharsaiot followed by death of two persons in police firing in Meghalaya”.

The Commission took notice of an item broadcast over A.I.R. on 5th November 1993 that two persons had died as a result of police firing on a violent crowd gathered outside Sohra Police Station in Cherrapunjee in Meghalaya state. It was reported that people had gathered to protest against the alleged custodial death of Shri Shamskhen Kharsaiot. The Commission immediately called for a report from the Chief Secretary, Meghalaya. In November, 1993, the state government sent an interim report stating that in regard to the alleged custodial

death, Magisterial Inquiry had been ordered, and that in regard to the incident of police firing, a retired High Court Judge was being requested to investigate the matter. It was further reported that the next of kin of the deceased had been given Rs.25, 000/- to meet funeral expenses etc.

On perusal of the interim report, the Commission called for a further report on the action taken and the State Government sent a report on 15th, January 1994. With regard to the custodial death, it stated that the Magisterial Inquiry had, prima facie, indicted the concerned police officer. Criminal cases had been registered against him. It was further reported that ex-gratia assistance of Rs 50,0000/- had been given to the next of kin of the deceased and a near relative of the deceased had been given an appointment in Government on compassionate grounds. With regard to the deaths resulting from the police firing, it was reported that an inquiry by a retired High Court Judge was continuing.

On perusal of the story of the above incidents and following steps taken by the State Government, it is clear that the State Government had done such remedial measures to compassionate the deceased family mainly due to the pressure from the Commission. This is one only among many incidents on which the Commission had done many remarkable achievements on complaints covering almost all aspects of human rights violations received from various corners.

NHRC has worked for the improvement of jail conditions in a very remarkable ways. The approach of the Commission for this purpose according to B.P. Singh Senegal has been two-fold: first, to study the factors responsible for over-crowding in jail and the steps needed, to reduce the over-crowding; and second, to encourage such measures as may be necessary to develop or improve the skills of inmates, with a view to enabling their reorientation and facilitating their integration into society upon release from jail. ¹²

Members of the Commission have visited and studied conditions in a number of jails in various parts of the country. These include the jails in Delhi, Hyderabad, Patna, Indore and Vellore. Jails Manuals of various states are under

examination with a view to evolving a model of All India Jail Manual. The Commission initiated its review with an examination of conditions in Tihar Jail in the Capital. Discussions were held with the Chief Secretary and other senior officers of the Government of Delhi. After having deliberate discussion with these authorities, various reforms measures were suggested. Establishment of Vocational Training School on 15 August 1994 was a remarkable outcome from the deliberations and suggestions. Many concrete measures were brought about by authorities of various Jails in the country as per the recommendations and recommendations of the Commission. The Commission also takes many measures for the improvement of the conditions of police lock-ups and districts jails in different parts of the country.

The Commission has been assigned to work for the purpose to Review of existing laws, Implementation of treaties and other International instruments on Human Rights to meet the growing concern in the country about the issues pertaining to human rights. In a short period of its inception, the Commission has directed its attention towards starting an in-depth study of the Terrorist and Disruptive Activities (Prevention) Act, 1985 (TADA), a task in which it has enlisted the assistance of Law Commission. The final revocation of TADA, which is by its nature very opposite to human rights culture, is the outcome of the efforts made by the Commission. The Commission also significantly worked for the total removal of Child labor and sexual discrimination that are still prevailing in India. The Commission in this regard maintains a close connection with the Law Commission.

The Commission, by virtue of its various achievements, therefore shows its usefulness for the promotion and protection of human rights. The NHRC has established its credentials as a statutory independent body within a short span of period. There was a growing awareness in the society about the human rights and the people want to seek redressal of various kinds of rights violations. The effective performance and prompt response from the Commission has encouraged people to protect their human rights.

It is, thus, clear from the above that much has been endeavoured and achieved in the past years. During the first decade of its working, the Commission has evolved from being a body that was initially viewed with skepticism to one that is widely viewed as an instrument of redressal, on which increasing reliance is being placed by the citizens of India to ensure the defence of their rights.

3.3 Provisions of the Protection of Human Rights Act, 1993. Evaluation of their Implementation.

Provisions of the Protection of Human Rights Act,1993.

The Protection of Human Rights Act,1993 contains 8 Chapters and is divided into 43 Sections. Chapter I is of preliminary in nature and defines the Act. itself in general and various words/terms used in the Act and the jurisdiction or the extent to which the Act, applies. The Act extended to the whole of India, but it applies to the state of Jammu and Kashmir only to certain matters [Seven Schedule List I (Union List) and List III (Concurrent List)]¹³

The Act, defines the term human rights as *'rights relating to life, liberty, equality and dignity of the individuals guaranteed by the constitution or embodied in the International Covenants and enforced by courts in India'*.¹⁴

The main purpose of the Act, is protection of human rights and for this purpose, provides for the constitution of Human Rights Commission and Human Rights Court at national and state levels respectively. The Act states that, "*The Central Government shall constitute a body to be known as the national Human Rights Commission to exercise the powers conferred upon, and to perform the functions assigned to it, under this Act'*".¹⁵ In exercise of this power the Central Government constituted the National Human Rights Commission in New Delhi. As on 14 Nov 2003 the NHRC consists of A.S. Anand, Chairperson; Sujata

V.Manohar, member; Virendra Dayal, member; Y.Bhaskar Rao, member; R.S.Kalha, member).

The Act. also provides for the constitution of State Human Right Commission, as section 21 of the Act says: “A state Government may constitute a body to be known as the ... (name of the state) Human Right Commission to exercise the powers conferred upon, and to perform the functions assigned to a State Commission under this Chapter”¹⁶ By the year 2005, fifteen states-viz Andhra Pradesh Assam Himachal Pradesh Jammu & Kashmir Kerala Madhya Pradesh Maharashtra Manipur Orissa Punjab Rajasthan Tamil Nadu Uttar Pradesh West Bengal Chhattisgarh have constituted State Human Rights Commissions (see www.nhrc.nic.in/shrc) and at the same time some six (6) states viz- **Bihar, Orrissa, Uttar Pradesh, Andhra Pradesh, Gujarat, Karnataka** have proposed for the establishment of the State Commission.¹⁷

Mention may be made about Chapter VI Sec 30, which provided for the creation of Human Rights Court at the state level. The provision required the State Government to specify a public Prosecutor or appoint an advocate who has been in practice as an advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in that Court. In this regard, some states like Assam, Andhra Pradesh, Sikkim, Tamil Nadu, Uttar Pradesh, Meghalaya, Himachal Pradesh, Goa, Madhya Pradesh and Tripura issued notification for each District a Court of Session to be Human Rights Courts under Section 30 of the Act.¹⁸

Evaluation of their Implementations.

Overall performance of the NHRC is not up to the requirements. The formation of National Human Rights Commission in India was to some extent a result of external pressure from the UN and various international human rights institution. This had been evidenced in one of the Government statements, which noted the imperative need for the setting up of NHRC thus, “*National and international organizations in this field have been highlighting alleged violations of*

human rights by various Government functionaries. There is a growing feeling that the Government is not serious about such violations and excesses and brings the guilty persons to book. Against this background, nay impressions of Government's lack of seriousness on the issue of Human Rights is a matter of serious concern and needs to be dispelled". ¹⁹ As it was this background of the birth of Human Rights Commission in India in the year 1993, people were mixed up with expectation and skepticism about the working of the Commission in the initial stage. Some critics were not hesitate to called the Commission; National Commission for Terrorists, which they alleged that the Commission was giving most emphasis on the welfare of terrorists. Devaluing the provisions of the Act, people are making a mockery of the Commission for they alleged that the Government of India instituted the Commission not because of her commitment to human rights cause but as a result of external pressure or as it was compelled by world communities. However, with the establishment of the NHRC, people are giving more and more confidence to the Commission yet with the change of time and growing complexities of the Indian society, human rights violations is still rampant in this country, and the functioning of the Commission also is quite unsatisfactory.

There are obvious reasons for this weak performance of the Commission. Amongst various other things following points may be accounted as contributing factor for the basic weaknesses of the Commission. Firstly, The Composition or structural Organization of the Commission is not inspiring for the general public in the sense that people do not have confidence on the Commission by the fact that it is composed of 8 members and most of them are from members belonging to the fraternity who are unfortunately the most suspect in the matter of violation of human rights.

Secondly, serious indifference shown to the commission by the Government caused to ineffective working of the Commission. Annual Reports prepared by the Commission is to be discussed by both the Houses of Parliament and then published. But as a normal incidence, the Reports were laid before the Parliament overdue and most of the remarks and suggestion contained in the Reports were

hardly accepted by the Government. This is a clear indication of Government's indifference towards the actual working or effective realization of the human rights provision in Indian context.

At this point, it may be essential to make some suggestions for the better working of the Commission:-

Appointment provision for composition of NHRC is erroneous. Two members are to be appointed from person having knowledge or practical experience in matter relating to human rights. This is too vague. Instead of having a mere knowledge on human rights a person who is working or had worked in the field of human rights need to be appointed to ensure that the Commission's commitment to human rights cause. Again in matter of selecting members to the Commission, it is strongly felt that the Chairman of the Commission must be included in the Selection Committee and also main bulwarks for the protection of human rights like the Chief Justice, the Press and Editors Guild may be included to ensure complexity of the Commission.²⁰

The human rights violations occur both in the domain of State and Civil society. The unequal structure of dominance and exploitation give scope for human rights violations by organized groups like terrorists and militants. The Act confines itself to addressing the human rights violation only by the state institutions. It ignores human rights violation at various other levels, outside the domain of the state. The Act can be more effective if its area of concern will appropriately focus on this point.

The provision of the Act fixed a one-year period as the duration of filing of complaint. With the series of socio-cultural factors impeding the immediate filing of complaints, it would be more realistic, if the NHRC entertains cases where there has been reasonable and purposeful delay in the making of the delay.

Regarding the Armed Forces, the Act should enlarge NHRC's jurisdiction to inquire into violation of human rights when they indulge in excess.²¹ Due to

various operational problems and technical difficulties involved in the Act, itself, the Commission felt it strongly needed to make amendments on the existing Act and then in March 2000 transmit its proposals for amendments to the Act to the Central Government. However, it is quite sad to learn that the Government still pending proposals submitted to it by the Commission till today. No positive sign have not yet received from the Government in this regard.

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CHAPTER – IV

4.1 Mizo National Front Insurgency, Counter Insurgency Measures and Human Rights; 4.2 Political Parties - Mizo Union, Congress and Peoples Conference and Human Rights, 4.3 Church and People's Union for Civil Liberty and Human Rights; 4.4 Police and Judicial Administration and Human Rights; 4.5 Perspective on Human Rights Commission in Mizoram, Critical Appraisal.

4.1 Mizo National Front Insurgency, Counter Insurgency Measures and Human Rights;

The Colonial administration and the Government of Assam in particular did lot of works for Mizos, but doing so they also did various things which had consequences on the life and thought of the Mizo people. Again, occurrence of famine in 1959 caused by bamboo flowering that resulted to total failure of agriculture, agriculture, which was the main backbone of the traditional Mizo society, resulted to the worsening of situation of the region that finally led to the rise of insurgency in the area.

Under such circumstance, Laldenga a fiery orator emerged as leader. He organized a band of young men into a 'Famine Relief Front'. The same was converted into political party called Mizo National Front (MNF) on 22 October 1961 with the following objectives.

1. *Integration of all Mizo ethnic groups under one government possessing the highest degree of freedom.*
2. *Up gradation of the status, and the development of the economic conditions, of the Mizo people.*
3. *Safeguard of the Christian religion.*¹

Laldenga and his youthful followers went from village to village, providing food to the hungry, wining their confidence and telling them of the mis-rule that had brought nothing but misery to the people.² Being such an influential person, he successfully exploited Mizo youth's love of adventure and provided the youth with imported weapons and blue uniform. The slogan of independence of Mizoram was strongly propagated. Government of Pakistan was providing Laldenga and his followers with all encouragements, equipments and training. The situation was very tense and on March 1, 1966 Laldenga declared independence and Underground Government of the MNF was formed.

Counter-Insurgency Measures:

Insurgency, according to Oxford Advanced Learner's Dictionary (Sixth Edition), means '*an attempt to take control of a country by force*'. The Government of India when realized about disturbance of normalcy or an attempt to control of the territory by armed rebellion under the supreme control of Laldenga, the Government of India took various actions (Counter-Insurgency) *against group of people who were involved in armed rebellion*.

The Declaration of Independence by the MNF was condemned by the Government of India as secessionism and insurgency and then launched counter insurgency operations in such rude and brutal forms bringing serious violations of human rights of the Mizos. In this connection it is true to remark that the

independence declaration itself was a misleading one because people involved in the rebellion were not aware about what would be the consequences of the declaration which involved violent activities like looting, arson, intimidation, murder and attack on police posts. Again, the movement itself was not supported by majority population of the then Lushai Hill District hence; all did not share secessionist movement.³ Further it is true beyond doubt that many representative leaders of the area at that time made vehement appeal to the leader of MNF not to wage violent means against the Government of India but to resort to constitutional mean to achieve political ambition. However, those entire requests were turned in vain, as Laldenga did not pay a heed to the request. The revolt totally disrupted law and order situation as a result the administration in the District was completely paralyzed. The revolt, therefore, landed the territory to two decade long suffering. Here an attempt is made to highlight various sufferings, and violation of human rights caused by both the insurgents and the counter insurgency measures adopted by the Government of India.

The first major step taken by the Indian Government for the suppression of the insurgency was declaration of the whole district '*Disturbed Area*' on 2 March 1966 under the Assam Disturbed Areas Act, 1958 by the Government of Assam. The Armed Forces Special Power Act of 1958 as amended by the Armed Forces (Assam and Manipur) Special Power Amendment Act of 1972. Immediately after receiving information about the outbreak of independence movement in Mizoram, Government of Assam held Assembly discussion on the subject, angered by the deceiving personality of MNF leaders, Chaliha, the Chief Minister of Assam charged the MNF leaders to be all betrayals and expressed his opinion that the betrayals had to be dealt with an appropriate manner. This indicates that the Assam Government was about to adopt *tit for tat* policy, which would mark the beginning of the suffering of the innocent people. The Government of India also declared the MNF unlawful organization and also banned it on 6.3.1966.⁴ The Government of India by Notification on March 6, 1966, cited that the MNF activities are '*prejudicial to the security of the Mizo district in the state of Assam and the adjoining parts of the territory of India*'.

The outbreak of armed rebellion in Mizoram that disturbed normalcy, law and order became a serious concern for the Government of India. The then Minister of Home Affairs GL Nanda on March 3, 1966 reported the matter in the Parliament as under;

*'There is enough evidence to come to the conclusion that these acts are part of a campaign by misguided extremist elements in the Mizo National Front to back their demand for independence. Governments are determined to put down the disturbances with utmost firmness and speed, and to restore peace and order. They are confident these will be achieved within a short period.'*⁵

The Government of India made Rule 32 of the Defence of India Rule 1962 applicable to Mizo District, which greatly enlarged the power of the Armed Forces. Promulgation of **Armed Forces Special Power Act, 1958** in the area brought rampant violations of human rights of Mizos resulting to the committing of atrocities like opening of houses and looting of properties or forcible burning of houses by the members of the security forces. Rape and other deplorable activities became common, not only in Aizawl town but throughout Mizoram.⁶

The most unfortunate part of the context was that by virtue of the Armed Forces Special Power Act the army personnel were empowered with such an extreme powers and that they took the administration of the area and then launched the counter insurgency combating operation with almost no limits. They did whatever they feel necessary for curbing the situation because they were given enormous powers by the Act itself. For example, under section 4 of the said Act, (as amended, 1972) conferred the power upon any commissioned Officer, warrant officer, non-commissioned officer or any other person of equivalent rank in the armed forces following powers,

a) *If he is opinion that it is necessary to do so for the maintenance of public order, after giving such due warning as he may consider necessary, fire upon or otherwise use force, even to the causing of death, against any person who is acting in contravention of any law or order for the time being in force in the*

disturbed area prohibiting assembly of five or more persons or the carrying of weapons or of things capable of being used as weapons or of fire arms, ammunitions or exploitive substances.

b) Destroy any arms dump, prepared or fortified position or shelter from which armed attacks are made or likely to be made or are attempted to be made, or any structure used as training camp for armed volunteers or utilized as hide out by armed gangs or absconders wanted for any offences;

c) Arrest without warrant, any person who has committed a cognizable offence or against whom a reasonable suspicion exists that he has committed or is about to commit a cognizable offence and may use such force as may be necessary to affect the arrest;

d) Enter and search without warrant any premises to make any such arrest as aforesaid or to recover by person believed to be wrongly restrained or confined or any property reasonably suspected to be stolen property or any arms, ammunition or explosive substance believed to be unlawfully kept in such premises, and may for that purpose use such forces as may be necessary.

As equipped with such vast powers, the army in operation in the area undertook the counter insurgency operation, which brought acute suffering of the innocent, which became unbearable. Various brutalities and inhuman treatment given to the general population was such shameful degree that the ideals of right to life, right to freedom of expression and question of justice never gain a ground. Arbitrary arrest, detention without reasonable ground, molestation of innocent women just on ground of suspicion of showing faith to the undergrounds, rape of Mizo women, inhuman treatment or torturing of innocent on ground of suspicion, etc were common incidents.⁷ It is not wonder that human rights were trampled upon during those days as the Act itself gives shelter for the unaccounted army personnel. Section 6 of the Act says,

“No prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the Central Government, against any person in respect of anything done or purported to be done in exercise of powers conferred by regulation. While the armed forces personnel were thus given a free hand without any accountability, the affected people were not provided any legal redress.

Another harsh measure adopted by the Government to counter insurgency was introduction of the Scheme of **Grouping of Villages**. The government introduced the scheme to subdue MNF volunteers who had a strong control of the far-flung areas or the remote villages where the Indian Army could not maintain their upper hand. The scheme was carried out in different stages and the first phase was done under the scheme of “*Protected and Progressive Villages*” under the provisions of the Defence of India Rule, 1962. The second category of grouping was done in 1969 under the scheme of, “*New Grouping Centres*, under the Provisions of the Assam Maintenance of Public Order Act, 1953. The third category of grouping called, “*Voluntary Grouping Centres*” was ordered again in 1970 under the same provision of the Provisions of the Assam Maintenance of Public Order Act, 1953. The fourth and last category called “*Extended Loop Areas*” was ordered again in the same year of 1970 under the same provisions.⁸

The main objective of introduction of Village Grouping was physical elimination of the MNF volunteers and of course to subdue the underground movement. In fact it was done to crush all the elements of zeal for political independent and to show their superiority over the insurgents, which however had brought serious sufferings of the people of Mizoram. About 5200 villages were affected by the scheme. The scheme caused acute human trauma to the villagers. In the process of grouping, the Indian Army would move and surround the notified villages before dawn, issue quick notice to the villagers to take their belongings, and move to the new site. The old abandoned villages with their granaries were then burnt. Vumson clearly describes the situation, thus... “In many instances villagers were forced to move out of their old dwellings at gun-point because they were reluctant to leave what they had been their homes for generations. In most

cases, the villagers had to leave on one day's notice. There was no time to pack their belongings and it was not possible to carry everything at one time. Animals had to be killed and food grains had to be hidden in the forest. If there was no time to hide food grains they were burnt with the houses. As soon as the people left the place, the army personnel ransacked the houses, keep the valuables for themselves and then burn them down. Hidden food-grains in the forest when discovered were taken away by the troops and hoarded or villagers were ordered to burn them.⁹

Such forcible resettlement of villages greatly destroyed the traditional economic system that had adverse effects on the social structure. It brought severe economic stress and landed the rural populations to the verge of acute famine. There was no significant step for rehabilitations of the affected villagers. Everything was done arbitrarily and more sadly there was no system of seeking redress for the grievances. Villagers had no option but to comply with the orders of the army personnel. Thus, the period between 1966 and 1970 can be called as the darkest period in the course of underground movement as most of the human trauma and tragedies happened during this period.

During the course of the present study, the researcher in an interview with one of the victims named C.Zakhuma, villagers of Buhban, somewhere around 100 km away from Aizawl, now residing in Chhinga Veng, Aizawl informed the scholar, that, *“One day a group of army personnel on their return from their regular patrolling, angered by their failure to trace the underground, ordered the whole villagers to gather on the top of the hill lying in the middle of the village. All the men folk were forced to lie on the ground and forced them to slide around the Church building. People including him while moving on the ground around the hill were kicked and beaten by the army. In the meantime, some army men forcefully separated two unmarried girls X and Y (real name not disclose) from the other and undressed them almost naked at the sight of others. Zairema, Village Council President of the village was hanged up side down in the village street and beaten him up to unconscious. The Army not yet satisfied with their extreme behaviour then burnt all houses to ashes. The whole village was then forced to join*

Khawruhlian Grouping Centre and the village was deserted on 19th December 1967.” It all happened in the year 1967 and within this year the whole village was burnt to ashes three times. The sufferings of the villagers were that all their properties were burnt to ashes and atrocities done upon them were beyond account.

The researcher was informed when interviewed Saihlupuii, blood relative of victim of Army atrocities during the insurgency, a tragic event in 1975 that caused to the death of innocent villager named Saizatawna, 45 s/o Saithuama North Chaltlang village of northern Mizoram. *“One day, he (Saizatawna) father of three kids, a farmer, was while on his return from the rice field carrying a country made gun made by him only for protection of his field from the attack of wild animals, he suddenly was about to meet army patrolling. Just before the army reaching at him, he could somehow managed to hide his gun which the army strictly prohibited yet unfortunately could not throw away the cartridge kept in his pocket as the army were reaching at him immediately. The Army then caught him keeping the cartridge inside his pocket and then arrested accusing him as an underground outfit. It was his entire fate that he met his last. He was confined the whole night torturing till dead and the villagers heard the sound of torturing the whole night. No one was allowed to visit or see him during that whole night when the Gorkha Regiment tortured him; his relatives were informed to collect the dead body the next morning. It was everybody’s knowledge that he was neither underground volunteer nor has any connection with the underground movement”.* Similar types of arbitrary arrest, detentions and even killing of innocent persons were common incidents during those days.

Another incident that came out of the exercise of military powers took place in Kolasib in 1966 is recorded. *“In Kolasib, 50 miles of Aizawl, the army rounded up all the men folk of the village, about 500 of them. The Security Force gathered and made to lie down on the ground on their stomachs and then were kicked, beaten, and confined for the night. At night groups of soldiers moved about the village. They broke into the houses, helped themselves with everything of value-clocks, sewing machines, clothes etc... and raped the women”.*¹⁰ The same shocking

incident that took place in Kolasib at the same time as recorded was, "There was the case of a woman in an advance stage of pregnancy-Lalthuami, wife of a cultivator, Lalkhangliana. Five soldiers appeared in her house one night, took the husband out of the house at gun-point and then while two soldiers held the woman down, the third committed rape".¹¹

The inhuman trauma caused to the Mizo by the Indian Army during the insurgency period resulted to the death of 2116 innocent people. Due to army atrocities countless number of men were made handicapped or physically disabled. Moreover, around 600 villages, more than 30000 houses were burnt to ashes and even the Church buildings were not spared in many villages. The army with no compensation arbitrarily confiscated around 4000 guns; the Mizo valued most among their possessions.¹¹ In all such incidents, the Mizo suffered silently as there was no any institution or agent to which the victims can resort to for the relief or seeking redress for their grievances. It was all a nightmare that the whole populations were made subservient to the power and authority of the Security Forces.

Though widely accepted among the Mizos that the army operating in the territory during the insurgency period committed human rights violation of the Mizos including the innocent people, yet it is essential to make mention about the positive role of the security forces for the safety and protection of the innocent people from the insurgents. As demanded by the social context at that time, the security forces in many occasions provided the civilians, who were on the verge of extreme famine, with food supplies by air especially in the interior parts of the territory at great costs.¹² In the mean time, the MNF insurgents adopted activities, which were basically human rights violation by its nature like depredations activities such as ambushing of army patrols, kidnapping certain civilians, terrorizing the loyal and friendly tribes, Government servants, looting rations, money and arms from the people, sniping at army convoys, levying and collecting various taxes like house tax, village tax and forced donations.¹³ In fact, most of the insurgents who were from unscrupulous members of the community having had loose behaviour showed untoward or unwanted behaviour towards the innocent

people, which in turn brought severe suffering of the general masses. Donations and forced extraction or extortion of foodstuffs and other properties from the civilians by the insurgents, reached an extent beyond the capacity of the people, bringing untold misery of the people.

The Government servants both Mizo and non-Mizos were the most victims of the insurgents' ugly behavior during the turmoil. RN Prasad rightly stated that, "Underground rebels threatened and terrorized the loyal section of the population including the Mizo Government servants at Aizawl and other places by a campaign of murder, intimidation, arson and kidnapping with a view to paralyzing the restored administration. They forced the Mizo Government servants to stay away from their offices in the urban and rural areas. The District Council Members and officials wherever found in the interior villages were harassed and forced to resign from their services. Thus, loyal moderate citizens and Government Officials were in a regular panic. So, most of the Mizo Officers and the District Council Members in Aizawl and other important places used to take night shelter in the buildings or houses located nearby the security posts".¹⁴ This indicates that the civilians during that time were not free from their fellow Mizos either but suffered various atrocities and suppression from both the army and MNF insurgents. It is thus, observed that the MNF insurgency brought various atrocities upon the civilians on the hand measures adopted by the Indian army to subdue the movement also did equal wrongs to the innocent population. Had the State Government (Assam) or law and order enforcement agencies exercised its powers and might in a manner which would protect human rights and human dignity of the territory, such rampant violations of human rights might not have happened in the area. In this connection, it is worth mentioning about the observation of the Supreme Court of India in DK Basu vs State of West Bengal that the,

"Challenge of terrorism must be made with innovative ideas and approach. State terrorism is no answer to combat terrorism. State terrorism would only provide legitimacy to terrorism; that would be bad for the state, the community and above all for the rule of the law. The state must, therefore, ensure that various

agencies deployed by it for combating terrorism act within bounds of law and not become law unto themselves” ¹⁵

This is no doubt the opinion of the Supreme Court with regard to the need of due care and soft approach in dealing with the problem of terrorism that brought threatening to the security and integrity of the nation, yet it also proves its validity in a matter of dealing with insurgency problems happened in North Eastern India including Mizoram.

It is also suggested here that the most common method adopted as counter insurgency measure need to be eliminated in its totality. Torture in common language means, “ *severe pain or suffering, whether physical or mental, inflicted by, or at the instigation of, a public official on a person, for such purposes as obtaining from him, or a third person, information or confession, punishing him for an act he has committed or is suspected of having committed or intimidating him or other persons for the same purpose*”. ¹⁶ The practice of torture or adoption of *third degree* interrogation has been in practice in insurgency-affected areas like Assam, Nagaland, Manipur, Tripura and Mizoram. It degrades and affects the dignity of person.

In this regard, various International Human Rights Instruments like the UDHR, prohibiting torture under Article 5, which states that, “*No one shall be subjected to torture, or cruel to human, inhuman or degrading punishment*” need to be realized at international, national or regional levels. The ICCPR also specific mention about the prohibition of torture under Article 7, stating, “*no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment*”. Various Constitutional Provisions dealing with protection against torture, cruel and unusual punishment under Articles 14, 19 and 26 of the Indian Constitution need to be ensured. Further Indian Penal Code under sections 348, 330, dealing with punishment for wrongful confinement and extortion of confession by means of coercion should be strictly followed in the course of maintenance of law and order by the state agencies. Finally, Convention Against Torture and Other Cruel or Inhuman or Degrading Treatment or Punishment, adopted by the UN General

Assembly on December 10, 1984, which is also ratified by India, must be totally observed in India. Efforts of the National Human Rights Commission, New Delhi for the removal of this evil practice must also be put into reality.

4.2 Political Parties - Mizo Union, Congress and Peoples Conference and Human Rights.

Mizo Union (MU)

The Mizo Union, formed on April 9, 1946 was the first political party in Mizoram, Originally, it was named *Mizo Common Peoples Union* and changed to *Mizo Commoners Union* and finally to Mizo Union.¹⁷ The Mizo Union (MU) completely dominated the electoral scene for almost 20 years since 1948 up to 1974. The party, however, met its last after being power for about 20 years when merged with the Congress Party on January 23, 1974.

The MU right from its inception had been insisting on the abolition of the oppressive practices of the Chiefs such as construction of Chief's house by free labour, payment of paddy tax, bringing of disputes to the Chiefs for trial and flesh tax. An aged old institution of traditional Chieftainship, which was said to have been started from the period between 1450 to 1700,¹⁸ became a burden for most of the Mizo commoners. Under the institution, the chief were so powerful that the subjects were at the mercy of the Chief as he had the power over the life and death of his subjects and in fact all administrative and judicial powers were in his hands. Due to their vast powers, some of them had become real despots and acted in a very cruel manner towards the common masses which were unbearable and moreover abolition of this autocratic institution was fully justified in keeping in mind with the fulfillment of the democratic aspirations of the commoners.¹⁹ The Mizo Union successfully moved for the abolition of the institution that finally led to the abolition of the institution on August 16, 1954. It was thus a major contribution of the party that the human rights of the subjects that had been denied for generation under the Sailo Chieftainship had been secured.

Mizo Union again had a great contribution for popularization and use of the term *Mizo*. Credit goes to Mizo Union for its remarkable effort for the protection of Mizo language against introduction of Assamese as Official Language of the then Assam state in 1960. Leaders of the party took collective initiative for the protection of the lingua franca of the Mizo. They successfully popularized a more accommodative term *Mizo* in place of an exclusivist term *Lushai*. It also managed to change the name of the District from *Lushai Hills* to *Mizo Hills* on and from September 1, 1954; and again Mizo Hills was changed, through the party's effort, to *Mizoram* on and from April 29, 1972. In fact, the existence of the present Mizoram state since 1986 formerly on the status of Lushai Hill District Council within the state of Assam is the outcome of efforts made by it.

Realistic and progressive programmes guided the Party. It made a realistic approach towards integration of the territories inhabited by the Mizos, eradication of corruption, favouritism and nepotism prevalent in the administration. It also dealt with various humanitarian related issues like reconstruction of villages destroyed by the army, elimination of existing grouping system and provision of land to the villagers for cultivation. The party also did a lot for the improvement of the communications and water, electricity supply and provided people affected by the disturbance with relief. More importantly, the party made an all out effort to bring about peace and tranquility in the area. Quite remarkably, unlike the MNF party, MU stood for democratic order, constitutional means and peaceful transformation of the Mizo society opposing vehemently the cult of violence. It always advocated peaceful settlement of the vexed Mizo problems and also developed a common consciousness of a common end.²⁰ Due to its entire constitutional means and its total negation of any violent methods, MU received confidence of the Mizo people and hence ruled the territory for such along period. Its final merger with the Congress Party in 1974 was also believed to be for the cause of restoring peace and normalcy in the area.

CONGRESS PARTY

The Congress Party, officially the Mizo District Congress Committee (MDCC) that later became Mizoram Pradesh Congress Committee (MPCC) was

formed at Aizawl on August 10, 1961. Mizo district Congress Committee was under the charge and jurisdiction of Assam Pradesh Congress Committee from its inception till the attainment of Union Territory by the District in 1972. MDCC became a full-fledged territorial unit of Indian National Congress since 1972, since then MDCC became **Mizoram Pradesh Congress Committee (MPCC)**. By this time, MPCC was no longer under Assam Pradesh Congress Committee, but was directly under Congress Headquarters in Delhi, All India Congress Committee (AICC). The Congress party got rapid enlargement when the ruling Mizo Union merged with it on 12th January 1974.

The Congress party was in power in Mizoram for almost 20 years. Of all the existing political parties in the state, the Congress ruled Mizoram for the longest period of time. Among other things, role of the party for the restoration of peace and normalcy in the state deserves a credit. From being a disturbed area since 1966, Mizoram today has been now claimed to be the most peaceful state in India. By virtue of its strong commitment to peace, the party won the confidence of the people that they had been given opportunities to rule Mizoram for such a long period. It may be cited here that some of the hardcore MNF leaders were set out of jail as a result of effort made by the Congress party leaders. It was Lal Thanhawla and Sainghaka who bailed Laldenga and his son Danmawia out of Tihar Jail in Delhi on 29th October 1979. The party also did remarkable effort for preventing the Indian army from forcible grouping of village like Biate. An attempt to group villages along the Sialsuk ridge in 1968 was also prevented when the move was successfully challenged in the Gauhati High Court. There are several other instances of Congress leaders coming to the aid of people who were denied of their rights by both the Indian security forces and MNF insurgents.

Truly, the party was backed by the underground MNF for its advocacy of restoration of peace and tranquility in the state. The party's initiative for peace negotiation took a concrete form when Peace Accord, officially called *Memorandum of Settlement* commonly was concluded between the MNF and the Government of India at 7:00 pm (IST) on 30th June 1986. As per an agreement made earlier between the MNF and Indian National Congress for peacemaking, Lal

Thanhawla, the then Chief Minister, stepped down himself from the Chiefministership and vacated the post for Laldenga, President of MNF. This development finally wined up two decades long turmoil in the territory.

Another remarkable achievement of the Congress Ministry was the conclusion of Peace Accord with Hmar People Convention (HPC). HPC formed on 18th December 1986, demanded Autonomous District Council for the Hmars living in the north eastern parts of Mizoram under the 6th Schedule to the Constitution. This armed rebellion against the state government toll lives on both sides, seriously affecting law and order situation in the north-eastern parts of the state. To bring an end to this, the Congress government signed an accord with the HPC called *Memorandum of Settlement between the Government of Mizoram and the Hmar People's Convention* on 27th July 1994 at Aizawl. Keeping in mind all the above contributions of the Congress party, it may be safe to conclude here that Congress party in Mizoram did a lot of remarkable achievements for liberating people from clutches of oppression and suppression from both insurgents and state forces arising out of disturbances and war-like conditions that brought untold sufferings to the population.

Human Rights Committee in Mizoram.

As the situation became deteriorating in the early seventies, Brig. Thenphunga Sailo an army retired of high ranking, who had enormous experiences of army discipline and well versed with what the army ought to do and what not came forward to rescue his own people from various atrocities committed both by the Army and the MNF underground. After assessing the situation thoroughly, he came to the conclusion of making of an institution to which victims of the human rights violation may seek redress. It was in the month of June 1974, he organized a small meeting in which persons like Lalsawia, Thangliana, Zairemthanga, J.Kapthianga, Vanlalhruaia and few others were present. The meeting decided to form the Human Rights Committee. Thus, **Human Rights Committee** (HRC) was established on the same day.²¹ The organizational structure of the Committee was a simple one consisting of the Chairman, the Secretary, the Joint Secretary and

Treasurer. Brig. Thenphunga Sailo was the chairman, Zairemthanga and H.Lallungmuana Secretary and Joint Secretary respectively. The Committee established its office at Dawrpui locality, Aizawl.

The HRC was formed to realize following aims and objective;

“This Committee will endeavor to uphold the human rights of the Mizo people as guaranteed under the constitution of India.

1. *The Committee’s immediate objectives are two fold namely: -*

a) *Firstly, it will seek judicial intervention in the matter of forcible evacuation of villagers from their villages to other places.*

b) *Secondly, it will endeavor to restore goodwill, mutual understanding and cooperation between the Security Forces and the Mizo people, thereby removing the feeling of insecurity in the minds of the Mizo people against the Security Forces, which has been still prevailing in Mizoram. As thus it will ensure the safeguarding of individual human rights.*

2. *The Committee is non-political body. All citizens, Mizos or non-Mizos, regardless of their occupation, their religious beliefs, their political party affiliations, whether in business or Government Service who have the sufferings of the affected Mizo people genuinely at heart, are requested to lend support, either through a moral force or through prayers.*

3. *Lastly, the Committee will focus the attention of the powers that be in India on the silent sufferings of the affected Mizo people as a direct result of a para 2 (a) & (b) above, hitherto unknown to the rest of India”.²²*

Briefly, the main purpose of the formation of Human Rights Committee was to oppose various atrocities committed by Indian Force operating in Mizoram to counter MNF insurgency. In an effort to realize its objectives, members of the Committee toured different parts of the state and launched campaign against rampant human rights violations in the state. They launched awareness campaign about rights of the citizens and remarkable results were seen in this regard. The public were enlightened about their rights and showed great appreciation to the

venture of the Committee and at the same time the Indian Army also showed some sign of positive response. The Committee collected as many as thirty-six cases of army atrocities ranging from rape and torture to collective execution listing the names and ranks of the army officers involved.²³ In an effort to pursue the matter, the HRC submitted memorandum to the then Prime Minister, Mrs. Indira Gandhi, urging the Prime Minister to form impartial team to investigate the allegations of human rights violations. The letter called collection of alleged 36 cases of human rights violations as '*only a fraction of several hundred cases which had happened since 1966*' !! The Committee's report created a furor in the Indian Parliament. It was this memorandum that made aware the Government of India about gross violations of human rights arising out of insurgency measures adopted by the Army operating in Mizoram.

The Chairman of HRC, Brig. Thenphunga Sailo by dint of his military experiences over more than thirty years exerted enormous influence upon the higher authority in the army which in one way or the other produced some positive results that put significant limit on the Army excesses. This in a remarkable way improved situation in Mizoram as a result of which violation of human rights decreased to a significant extent.

The Committee again did remarkable achievement for the restoration of the rights of **Thlawhbawk** (*temporary dwelling place for the villagers who were returned back to their original villages*) dwellers. The Committee strongly condemned the **Village Grouping** carried out by the Indian Force and the implementation of the **Assam Maintenance of Public Order 1968**. The problems of '**Thlawhbawk**' dwellers was to some extent solved when the government granted voting rights to people who returned to their original villages from the Grouping centres. As a result of this development, quite a numbers of people forcefully grouped to Grouping Centres were returned to their respective villages and regained freedoms that had been denied for long. Looking at all these realities, it can be safely stated here that the Human Rights Committee achieved successes in its pursuit and the public were made aware about their basic freedom and fundamental rights guaranteed under the Constitution. The Committee restored

rule of law in the state. The Committee, in fact had made terminology of Human Rights well known to the people and people began to realize the importance of the term for practical purposes. People were encouraged to fight for their inalienable rights even against military might. Though very successful in its endeavours, the HRC was very short lived. By 1975, Chairman of the HRC along with some of his friends formed a new political party called, Peoples Conference. This led to the decline of HRC and since then the HRC became almost defunct.

The contribution of HRC was quite remarkable but at the same time not free from criticisms. The Committee was not up to the expectation as it was featured by organizational structure defect. It was nurtured and manned mainly by the Chairman, Brig. Thenphunga Sailo. Everything depends on the Chairman and the success and failure of the committee depend entirely on one person. Truly, it was a one-man team spearheaded by the Chairman himself. Some other personalities like Zairemthanga, H.Lallungmuana holding posts like Secretary and Joint Secretary respectively did not play important role nor important responsibilities were bestowed upon them. In this sense, it can be said that the Committee lack proper organizational framework that in some ways responsible for its weaknesses.

The Committee may be criticized again on the ground that Brig. Thenphunga Sailo, chairman of the Committee set up the Committee just as a stepping-stone for the formation of a new political party. It is widely believed that Brig. Thenphunga Sailo, a man of ambition prepared a firm ground for his political carrier by establishing Human Rights Committee exploiting the prevailing situation where promotion and protection of human rights was badly needed. This approach had been proved true by the fact that within a very short period of the formation of the Committee that a new political party was formally formed. Though the party in its Constitution, still included promotion and protection of human rights of Mizo as one of its objectives; "*The Party will uphold the aims and objectives of Human Rights Committee, Mizoram,*"²⁵ The Party after winning the election in 1978, did not however, give significant importance to the promotion and protection of human rights of Mizo.

People's Conference and Human Rights.

When a new political party, the People's Conference Party was formed on the 17th April 1975, people of Mizoram looked at it with great enthusiasm as the party president Brig. Thenphunga Sailo guided the new party with due emphasis on the human rights of the Mizo people.²⁶ Accordingly, the party included Human rights as one of its aims and objectives thus, "The Party will uphold the aims and objectives of the Human Rights Committee, Mizoram."²⁷ With this objective as the party campaign slogan, it attracted great sentiment of the population as a result of which the party strength increased by leaps and bounds. In 1978 UT election the party won the election by landslide victory and formed the first PC Ministry.

The social background at that time was so dark that there were rampant violations of human rights. People were denied their rights but there was no specific institution for the victims of human rights violation to seek redress. Restoration of normalcy in the state was the most urgent need. In this regard the party submitted series of memorandum to the then Prime Minister, Indira Gandhi urging her to resume peace dialogue between Government of India and the representatives of the Mizo National Front. Though, efforts of the PC Ministry could not yield tangible result for restoration of peace and normalcy in the region due to lack of consensus between the party and the underground leaders, the party deserves credit at least for its efforts.

Another remarkable effort of the Peoples' Conference Party with regard to promotion and protection of the rights of the Mizos was step taken by it for the resettlement of Thlawhbawk (temporary dwelling place) dwellers and to regain their fundamental and democratic rights which had been denied by the Government since operation of Village grouping. As mentioned earlier in this chapter, following the outbreak of armed rebellion in Mizoram in 1966, the authorities resorted to forceful grouping of villages as one of the means of fighting insurgency that caused unprecedented suffering of the villagers affecting around 80% population of Mizoram.²⁸ More sadly people who returned to their old villages were denied

democratic rights that they were not allowed to have Village Council. It was in this social context, the Peoples' Conference Ministry successfully pressed the Government to restore the institution of Village Council to several villages. The Government of India had given the recognition for the de-grouped villages and thus finally removed the wrongs that had been done to them for long. The successful effort of the PC Ministry in this regard may be cited as significant contribution for democratic rights guaranteed under the Constitution were ensured to many people settled in Thlawhbawk villages.

Again PC Ministry did some achievement for the preservation of Mizo ethnic, culture and social identity. Peoples' Conference party when came to the power in 1979 gave due emphasis on the protection of the ethnic identity of Mizo people. The Ministry adopted preventive measure to check influx of foreigners especially of the tribal like **Chakmas** from Bangladesh. The Central Government accordingly directed the Army Units deployed in Mizoram for insurgency duty to detect and pushing back Chakma infiltrators. One Border Security Force battalion was deployed along the western border and a fairly substantial number of Chakmas were pushed back.²⁹ Thus, the Ministry by taking concrete step for checking of infiltrators from bordering states, Mizo culture and ethnic identity has been still intact till today and in this regard the PC party deserves a remark.

The PC Ministry laid the foundation for infrastructure development in the state. During the five and half years of the PC Ministry, there were significant developments in the field of electricity, road communication, economic self-sufficiency. At the outset of the PC Ministry, Brig. Thenphunga Sailo, the Chief Minister evolved the strategic aims of development that he used to referred to as SIX BASIC NEEDS, aiming at provision of basic essential need to the people like - Food, water supply, power, communication, transport system and rural development. Developments in these areas are in fact essential parameters of improvement of the condition of the general population. The Ministry very often pleaded the Central Government at different forums to give adequate compensation to victims of army excesses and for destruction of any properties

during the anti-insurgency operations from 1966 onwards. In this regard, some success had been achieved.

However, PC party putting firmly human rights issue in the backburner, it is indeed ironic, but true, that the very P.C. Government was accused of committing serious human rights violation after it launched a bitter and bloody anti-MNF operation using the state's police force- '**Special Force**'. Several MNF personnel and people sympathetic to the MNF were killed; and in the process many innocent persons lost their lives. It was in such critical situation that enmity aroused between the Ministry and the combined effort of Lal Thanhawla, leader of Congress party and Laldenga that resulted to the death of many innocent politicians. Killing of politicians like R.Zadinga MLA on 15th June 1982, Lalthawmvunga MLA candidate of PC party on 11.4.1984, Z.A. Kapmawia on 15th June 1982, Lalsanga Sailo on 10th May 1990, Thantluanga VCP of Sateek village on 22nd April 1983 and Roenga 10th May 1990, were no doubt the product of the enmity between the underground MNF and the ruling PC Ministry.

It was such a dark situation that the PC ministry failed to restore normalcy in the state that terror reigned supreme. Angered by extreme behaviour of Mizoram State Police, the MNF underground continued their brutal behaviour that resulted to the death of many innocent people. In the mean time the so-called *Special Force* (state police equipped with almost unlimited powers designed to counter MNF underground formed by former Chief Minister, Ch.Chhunga) was blamed to have committed various violence resulted to rampant violation of human rights. Truly, in such a situation even right to life was shake.

It may be now safe to conclude that the Peoples' Conference party which started as Human Rights Committee when came to power totally ignored its ground foundation. No concrete arrangement had been made to continue the works of Human Rights Committee nor the human rights issue occupies a due place in the PC Ministry during its five years of ruling in the state. Therefore, the very foundation of peace, promotion and protection of human rights was neglected.

4.3 Churches and People's Union for Civil Liberty (PUCL) and Human Rights

Churches' Involvements for Restoration of Normalcy

The MNF declaration of Mizoram Independence in the year 1966, was followed by strong counter insurgency measures. Armed rebellion as the Indian Government called it and the following steps taken by the Indian Government to subdue the rebellion brought serious suffering of the innocent people. Assessing situation, the Church (Presbyterian Church) felt the need of appropriate involvement for the safety of the general masses which took a concrete form when the then Synod Standing Committee presently Synod Executive Committee held an emergent meeting at Synod Office on 13 March 1966 at 10:00AM. The Meeting formed Aizawl Citizen's Committee consisting of 18 numbers of representatives of various denominations and eminent citizens. Rev Lalingurauva Ralte and Paul Zakhuma Hauhnar were appointed the Chairman and the Secretary respectively. The meeting also formed two sub Committee- Relief Committee entrusted to provide people with essential commodities and dresses, and Complaint Cell meant for reporting various grievances due to military and Police excesses.³⁰ This effort significantly improved the conditions and the Government authorities also paid a positive heed to various endeavors of the Committee. The Committee members paid a visit to different prisoners cells where many arrested people were confined on the ground of suspicion. Due to all these efforts the masses were relieved to a significant extent. On July 14, 1966, an emergent Synod Standing Committee held at Aizawl decided to form Christian Peace Committee. The Committee entrusted following Church leaders like Rev.H.S.Luaia of Baptist Church, Rev.Zairema and Lalingurauva Ralte both Presbyterian Church as peace delegate to find out ways and means for peace dialogue between Laldenga of MNF and Indian Government. Accordingly, the Committee met Laldenga on November 3, 1966 and Indira Gandhi Prime Minister of India, Home Minister and other Officials in Delhi in the month of May. However, all these efforts did not produce a desired result and the situation rather deteriorated.

Churches' involvement for the restoration of normalcy in the state took a new turn when MNF moved Non-Mizo Quite Mizoram Order, on 10 June 1982. Lieutenant Governor of Mizoram SN Kohli called on different Church Leaders and made vehement request to them to take effort for revocation of the Order. The Church however denied the request on the ground that it was not appropriate for them to involve in non-religious matter yet expressed the need of calling for meeting of all representatives of Churches under the Presbyterian Synod auspices to improve the situation. This finally led to the formation of Zoram Kohhran Hruaitute Committee or Mizoram Churches Leader's Committee, (ZKHC) on 13 August 1982.³¹ The Committee entrusted three leaders like Rev.Lalsawma, Rev.Dr.PL Lianzuala and Pastor VL Rawna as peace delegates to find out solution for peace in the state. These leaders had series meetings with MNF President and the Prime Minister of India, Rajiv Gandhi at different places and times. The Committee convened meeting of all political party leaders in which three representatives of party like Mizo Union, Peoples Conference, Mizo Convention and Mizoram Congress attended in which they reached at a remarkable agreement that they will warmly welcome any kind of agreement reaching between the Government of India and MNF.³² Thus, the final conclusion of Peace Agreement on June 30, 1986 was to some extent result of the peace initiative of the ZKHC. It is an undeniable fact that the ZKHC's role in the whole process of peace dialogue was a great one. More importantly, voice of Churches during the whole period of insurgency produced a significant result in minimizing sufferings of the innocent people and put significant limits on the brutal behavior of both the MNF undergrounds and Indian Forces.

People's Union for Civil Liberty (PUCL).

People's Union for Civil Liberty (PUCL) Mizoram Branch was established in 1986. Lalremruata was the first President succeeded by Saingura Sailo. Presently C.Thangmura is the president of PUCL Mizoram Branch. It has Headquarters at Aizawl and the main objective of this body is to protect the liberty of every citizen. Paying Rs 10.00 and Rs 1000.00 for Annual and Life Membership respectively has made membership to the body. The organization since its inception has been

working for the realization of its objective yet no significant achievement has been attained in its pursuit. By the year 1992, as many as 60000 people got the membership to the organization with the hope of getting compensation in terms of money and in kind from arbitrary confiscation of land and guns by the Military Forces during the insurgency period. Though not successful to its entire endeavor, it is quite remarkable that more than 30 guns were returned to the owners and some are also given compensation in cash. The organization till today has been pursuing for the realization of its purpose and is expected that some more positive result may be obtained in future. The formation of PUCL marked a remarkable event for people whose rights and liberty had been violated during the insurgency period got redressed their grievances though not fully realize its objective.

4.4 Police and Judicial Administration and Human Rights.

Police and Human Rights.

Maintenance of law and order, detection of crime, booking of criminals, prevention of anti-social and criminal etc, are the very corner stones of police functioning. ³³ Nevertheless, the police personnel of India from the Director General to the lowest ranks are appears to incline to think that they can behave in manner they like, and the public opinion hardly matters because they are the custodians of the law. They are in many occasions are found having human rights unfriendly behaviour. Their callous behaviour upon the public has made the public losing their trust. The law enforcement agency like the police are in a true sense expected to receive sense and sensibilities of their fellow citizens whom they are expected to serve and not boss over. Lalneihzovi, when discussing on the importance of better law and order administration, rightly stated that, "Maintenance of law and order at satisfactory level is a basic prerequisite of governance/public administration. If the foundations of law and order are not well-laid and well-look after, no socio-economic development and welfare activities can be effectively undertaken" ³⁴

Administration of law and order in Mizoram since independence has been smoothly performed by the Superintendent, the Deputy Commissioner in various districts through properly organized state police. However with the changes of time and growing complexity of the Mizo society, many instances of law and order problem is now experienced in Mizoram.

Amongst many other things, the main challenge for the state law and order in the state is a growing role of the Non Governmental Organizations. Exercise of unlimited powers by the NGOs like Mizo students organizations viz Mizo Zirlai Pawl (MZP) and Mizo Students Union (MSU), the Young Mizo Association (YMA), Village Defence Party, (VDP) various Joint Action Committee (JAC) formed to realize diverse objectives etc caused serious problems of maintenance of law and order in Mizoram. There are also instances where the unscrupulous sections of the few people, creating problems, conflicts/tensions for non-Mizo in the name of protecting and preserving Mizo from economic and social assimilations. They are found doing unwanted activities towards their fellow citizens, inviting unnecessary tensions between the Mizo and non-Mizo. All these pose problems for the law enforcement agencies in the state. Sadly enough, there are instances, the NGOs imposed curfew for non- Mizos (not to get out of their residence for their own safety) and not on the Mizos. This is in reality, a matter of violations of human rights contained under Chapter III of the Indian Constitution and this practice hardly offer help to the law and order enforcing agencies in maintaining law and order.³⁵

In order to bring improvement in the matter of law and order enforcement in the state and for the establishment of human rights culture among the police personnel, it is now emphasized that the District Police Officer or Superintendent of Police must be equipped with the power to deal with a law and order situation in the district at least to meet immediate requirements. In many a time it is learned that consultation between the District Commissioner and the Superintendent of Police takes time almost preventing the police personnel to take urgent measures. Undue interference of the politicians in the police administration needs to be checked. Police personnel must be betterly equipped with modern techniques including proper training on human rights in order to bring changes on the

behaviour of the personnel in authoritarian manner leading to serious violation of human rights. In this connection, it is further suggested that **The Women Cell** (Estb. 1998) at Aizawl Police Station needs to be properly equipped with more staffs and better establishment. The existing **Forensic Science Laboratory**, which has been in existence since 2000 under the State Home Department, must be well equipped with modernized techniques and better establishment. Scientific investigation is a must in crime detection at least to avoid police atrocities during interrogation. The NHRC felt this necessity and hence formed a **Core Group** to study situation of Scientific investigation system in the country. Ministry of Home Affairs, therefore, issued direction to each and every state and UT for the improvement of State Forensic Science Laboratory on the basis of study report made by the Core Group. Yet, Mizoram Forensic Science Laboratory does not get proper development as per the recommendation of the Ministry of Home Affairs till today. There is also a need to have a fresh look upon the state's Anti-Corruption Branch (ACB)-the agency established specifically to check corruption of 'public servants'. The ACB is manned mostly by people largely considered mediocre in official circles, and the ACB is not granted autonomy as it is directly controlled by the state government and recruitments, promotion and transfer of all the officials in the ACB are done by the state government. Till date, no serious punishment has ever been given to those officials found guilty by the ACB; some of those found guilty of practicing corruption to the tune of several lacks of rupees are even being set free with a simple reprimand.

Judiciary and Human Rights in Mizoram.

The sub-Commission on Prevention of Discrimination and Protection of Minorities, in 1970, adopted a series of draft principles on Equality in the administration of Justice. The General Assembly in its resolution of 14 December 1943, called upon member states "*to give due considerations in formulating legislations and taking other measures affecting equality in the administration of justice, to the draft principles, which may be regarded as*

setting forth valuable norms, with a view to arriving at the elaboration of an appropriate international declarations or instruments”.

The administration of justice in Mizoram is being carried on in a very simple and rude form since the Indian independence. But due to the introduction of modern system of legal justice to that of the system of justice based on customary laws in Mizoram, the Mizos have failed to get the best of the two systems. Only the well-to-do persons in the Mizo society have been beneficiaries of this confused state of judicial administration. With the expansion of development activities in Mizoram, the tribal economy has experienced the impact of a fast enlarging money economy. This enlarging money economy has, indeed, aggravated the deteriorating condition of the value and utility of justice based in Mizo customary laws and has also corrupted much to the unsophisticated attitudes of the Mizo people. The enlarging money economy has also led to the emergence of classes, such as neo-middle rich (a few sections of the society) and the poor (large segments of the society). The class of neo middle rich seeks justice from the courts of Deputy Commissioner/High Court than that of the District Council Courts (DCCs) where justice is reliable and uninfluenced by misinterpretation. They can also bear the high costs of litigations, whereas the poor people, who have sought justice from the regular courts of the Deputy Commissioner, have become poorer owing to the high cost of litigations. They lose all that they had before filling a case because of the process being lengthy. The trial of cases/disputes in the modern courts without the help of lawyers is not possible. And to engage a lawyer in the trial of cases is unbearably expensive for most poor people. Most of the hill men, especially the poor are not aware of the implications/complications of modern legal system of justice probably due to its non-application of the hill areas. For instance, the codes of civil and criminal procedure are hardly applied to Mizoram and the other hill areas of North-East India, though the

rules lay down in simple form, as far as consistent with the local situation, the basic tenets of these Codes. So the DCCs justice may, indeed, protect most poor Mizos/hill men provided that there are codified and uniformly interpreted. Therefore, the courts constituted under the provisions of Sixth Schedule to the Constitution of India in Mizoram and the other Sixth Schedule areas of Northeast India should continue but suitably restructured with more powers of judicial officers, having degrees in law, so that they are able to play important part in the process of rule- adjudication in these areas.

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Another most serious complication in the judicial administration of justice in Mizoram is absence of separation of judiciary from the executive control. Independence of judiciary is the hallmark of democracy and also the basic foundation of human rights. Realizing this fact, the Seventh United Nations Congress on the *Prevention of Crime and the Treatment of Offenders* adopted the Basic Principles on the Independence of Judiciary in 1985. The Economic and Social Council, on the recommendation of the Committee on Crime Prevention and Control, adopted in 1989 the procedures for the Effective Implementation of the Basic Principles on the Independence of the Judiciary. The procedures require the States to adopt and implement the Basic Principles in accordance with their constitutional process and domestic practices. States are also required to publicize widely the Basic Principles in the official language of the country and to make the text available to all members of Judiciary. The procedures invite the government to hold the national and regional seminars and courses on the judiciary and its independence. The Government of India took concrete effort in this regard and most of the states under the Union of India implemented legislation for the realization of these requirements.

Even though the necessity of independence of Judiciary has been felt at international or national levels, separation of judiciary has not yet been practice till

today in Mizoram. It is thus an inevitable duty for the state government to take concrete measure for the realization of this obligation. There is no valid reason for not separating judiciary from executive in Mizoram having the most literate population among the Indian Union.³⁷

4.5 Perspective on State Human Rights Commission in Mizoram, Critical Appraisal.

Mizoram is a state, which claims to be an island of peace amidst a sea of storms. The Centre is giving the so-called 'Peace Bonus' to Mizoram state as the present state Chief Minister, Zoramthanga, used to drum the rhetoric "Mizoram is a peaceful state" convincingly. However, a missing fact about this is that mere absence of militancy does not make a state a peaceful one. In a state like Mizoram, role of the state power has been on a decline and the same time there is a ever-growing role of the NGOs to alarming extent.

As the case it is, here in Mizoram, human rights promotion and protection of individual liberty and freedom did not find a firm base. The term, human rights itself is very much unknown to the general public. Only when the area was engulfed with terror as a result of MNF declaration of independence and immediate adoption of counter insurgency measures, people began to recognize the term Human Rights for practical purposes. Efforts of the Human Rights Committee spearheaded by Brig. Thenphunga Sailo were, no doubt remarkable in this regard. However, a close look at the present situation rather showed opposite picture.

A constitutionally elected government is running the state of Mizoram, which became a full-fledged state on 20th January 1987, but at the same time the most powerful NGO in the state the Young Mizo Association (YMA), a non-state body, assumed an authoritative role. The YMA born in 1935 is now having more than 340,000 members and 747 Branches. (*Source: Zonet Cable New Service telecast on 24.10.06, Aizawl Local Cable Service*) By virtue of its enormous membership it

is now emerged as one of the strongest Voluntary organization in the region. It has now assumed a status of vigilante group, who together with the Church, showed with no hesitation their authoritative control of the state decision making even in some issues like implementation of Mizoram Liquor Total Prohibition Act. etc. In fact, YMA is today a repository of power feared even by the elected government. MLAs, ministers and other political wannabes desirous of contesting the next elections have to please the YMA.³⁸

It is no doubt that the YMA since its birth has been doing good to the general public, yet recent trend has shown authoritative behaviour when it launched a campaign calls a “war on drugs”. To achieve this end, it has adopted the most brutal methods and adopted even violence as a means to an end to reduce drug and alcoholic addictions, and for putting a check on drug peddlers and bootleggers. Surprisingly, the state is looking the other way even as atrocities committed by the militant wing of the YMA, namely the Supply Reduction Service (SRS) formed to contain drugs trafficking from the neighbouring areas, MTV or Mizo Tlangval, gained momentum. To one estimate, due to militant activities of the YMA’s campaign during the last year six people lost their lives.³⁹ Launching of campaign against drugs or any other intoxicating substance itself is not challengeable, and rather improvement of the social life and the prevention of uncounted numbers of Mizo youth from addiction or for the matter avoiding untimely death are quite urgent need yet various atrocities committed to many people on ground of mere suspicion grounds and adoption of such brutal forms leading to the death of as many as six people can never be justified. The fact very clear about this is that what the fundamental law of the land guaranteed rights for equal protection of law or right to equality and human rights are victimized by this movement. It is now far beyond doubt that Community Based Organization like YMA and its militant groups are exercising their powers, which in the opinion of the people are above the law. It gives such an unfortunate impression that even the elected Government turned out to a silent watchdog to different incidents and is giving support morally and materially. This is, in fact, a matter of justifying violence or violence glorification, which is really much against promotion and protection of human rights violations. The state is losing its moral authority to rule.

The situation in Mizoram during the recent years shown negative trend that resulted to the outright violations of human rights and fundamental freedoms. In a memorandum dated 24 May 2005 submitted to the state Chief Minister of Mizoram signed by H.Zosangliana, President, Forum for the Implementation of Constitutional Rights in Mizoram (FICORM) and Vanramchhuangi, Director, Human Rights and Law Network, Aizawl, Mizoram, the two signatories urged the State Government to contain human rights violation and open and direct violations of fundamental laws of the land. The memorandum contained as many as ten cases of excesses and atrocities reported by various local newspapers and all of incidences of human rights violations or laws violations were alleged to have committed by local NGOs in their course of launching campaign against drugs in Mizoram. The memorandum highlighted various incidences reported in different newspapers such as;

1. Bawngkawn, Aizawl locality Joint Action Committee (JAC) and Village Council jointly drove 40 families out of their homes said to be peddling in drugs and intoxicating substances (Aizawl Post, 12th October 2004)
2. Alleged drug peddler, Mr Lalliana s/o Zorama had his ankle broken by members of a group calling itself Mizo Tlangvalte (MTV) (Vanglaini 28th February 2005)
3. Mr Zokhuma of Thuampui locality was beaten up by a mob and his Maruti car burned because of allegations in involvement in drug dealings on January 22, 2005. Many local papers reported the incidence on 22 January 2005)
4. A vehicle belonging to Ms Kawlchhungi and a house belonging to Mrs Remchhungi were destroyed by a mob from Bawngkawn locality on 26 January 2005 (Vanglaini Daily, dated 28 January 2005)
5. Mr Zothanbuanga's house was vandalized by a mob from Republic locality on 25th February 2005 (Tawrhawm Daily dated 28th January 2005)
6. Mr Vanlalzuia, Commander of Mizo Tlangvalte (MTV) issued a Press Release on 23rd February where he owned up a barbarous action taken against alleged 5 drug peddlers (a verbatim reproduction of the Press Release in Vanglaini Daily dated 28th February 2005)

7. A house belonging to one Mr. Famkima, an alleged alcohol peddler, located at Airfield locality, Tuirial Village was destroyed by the local residents on 25th March 2005 (A news report in the Aizawl Post Daily dated 26th March 2005)
8. May 5 2005; Mr Islam Laskar-44 of Sonai Road, Silchar jump from a fourth storey floor while in the custody of the Khatla YMA Branch on drug peddling charge and suffered serious injuries (a news report in the Aizawl Post dated 9 May 2005)
9. Two young men were ankle –cuffed and displayed in public (at roadside) at Rangvamual locality on March 13 2005 for allegedly carrying alcohol (a news report in Vanglaini 14th March 2005). The same newspapers report said Rangvamual Village Defence Party (VDP) members collected money from persons found possessing alcohol and drugs which was used by the VDP towards “administrative costs”
10. An alleged drug dealer Mr N Rajen Singh, a Manipuri was beaten up by members of the Central Young Mizo Association (CYMA)'s Supply Reduction Service, (a special body formed by CYMA to reduce drug supply) on May 16 2005. He later died on 18th May 2005 at Bethesda Hospital, Aizawl succumbing to his injuries (a news report in the Aizawl Post dated March 18, 2005)

These are in fact only a part of many incidences that took place during the year 2005 as a result of excesses or rude behaviours of NGOs in their campaign against drugs and intoxicating substances. There is no denying the fact that there are good reasons for the NGOs to come forward to contain drug trafficking and other substances but at the same time there can be no just ground for the NGOs to behave unbounded. The moment when agencies like NGOs other than appropriate state agencies are taking the responsibilities of maintenance of law and order or taking law in their own hands, instances have cropped up where basic human rights as well as fundamental human rights guaranteed by the constitution have been violated. In such a situation a state Government have to assume its authoritative role. But unfortunately, in almost all incidences mentioned above, the

State Government or its Agencies rather turned indifferent, opening more chances of human rights violations or breach of fundamental law of the land.

It is at this context that the various constitutional provisions relating to individual freedom and liberty need to be made available to all the citizens irrespective of any membership to any group. Protection of life and personal liberty contained in Article 21 of the Indian Constitution guaranteed that no person must be deprived of his personal liberty or his life cannot be taken away except under the law.

Again, adoption of third degree or cruel method of interrogation and inflicting of inhumane or degrading treatment is strictly prohibited under the law. ***Protection Against Cruel or Inhuman Treatment during Investigation, Cr. P.C. Section 54, 162, 164, 176 , The Indian Evidence Act, Section 24, 25, 26 and The Indian Penal Code, Section 330, 331*** etc, are some among many which deal about prohibition of cruelty or violent method.

Apart from these instruments, there are certain measures to check uncivilized method of interrogation and giving of inhuman treatments available under the United Nations auspices. Some prominent are *Declaration on the Protection of all Persons from being subjected to Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment, 1975; The Convention Against Torture and Other cruel, Inhuman or Degrading Treatment or Punishment of 1984*. Under the Article 5 of *The Universal Declaration of Human Rights, 1948*, torturing of any kind is expressly condemned. In our Constitution under the *Preamble; Fundamental Rights leh Directive Principles of State Policy*, promotion and protection of human rights occupies central point and in fact, these are the provision of human rights in its various manifestation.

Despite all the above Constitutional provisions and the human rights instruments at national and international levels, human rights violations still rampant in the state. It is not difficult to point out certain factors responsible for incidents of human rights violations in the state, thus firstly, there is a very low

degree of law awareness among the people, secondly, Inefficiency in respect of law enforcement or lack of political will to implement human rights instruments in the state, thirdly, Lack of conceptual understanding of human rights and its implications, fourthly, Lack of Human Rights Institution in the state, finally, Absence of Human Rights Education in the Educational System in the state.

It is thus in this background that formation of State Human Rights Commission in Mizoram is an urgent need as desired by Section 21 of the Protection of Human Rights Act, 1993. Establishment of State Human Rights Commission would strongly indicate the degree of the state Government's commitment to human rights protection. It is in fact quite essential to have an institution to which citizens can seek redress of violation of their rights and at the same time will relieve the arduous work of the state judicial administration. As on 19.11,2006 there exist fourteen State Human Rights Commissions in the states of ANDHRA PRADESH, ASSAM, HIMACHAL PRADESH, JAMMU & KASHMIR, KERALA, MADHYA PRADESH, MAHARASHTRA, MANIPUR, ORISSA, PUNJAB, RAJASTHAN, TAMIL NADU, UTTAR PRADESH, WEST BENGAL, CHHATTISGARH (see: www.nhrc.nic.in, **National Human Rights Commission, Faridkot House, Copernicus Marg, New Delhi**.) Some states like **Bihar, Andhra Pradesh, Gujarat, and Karnataka** also have proposed for the establishment of the State Commission.

It may be worthy to mention at this point that the Chief Justice of Gauhati High Court, Aizawl Bench, Mizoram in 2002 formed the Human Rights Committee in Mizoram. (*Vide memo No. HC.VII.126/2001/... Dated 7th February, 2002*). The Committee comprises following officials;

- | | | |
|----|--|----------|
| 1. | The Registrar,
Gauhati High Court,
Aizawl Bench, Aizawl. Mizoram | Chairman |
| 2. | The Inspector General of Prisons,
Aizawl, Mizoram | Member |
| 3. | The Deputy Commissioner,
Aizawl District, Aizawl. Mizoram | Member |
| 4. | The Superintendent of Police, (CID)
Aizawl. Mizoram | Member |
| 5. | The Addl. District Magistrate (J) | Member |

Aizawl. Mizoram

Unfortunately, even this Committee has not been making remarkable achievement in its pursuit and ironically its very existence is still unknown to the general public till today. There is a human rights institution in the state called Human Rights and Law Network (HR&LN) working since 2003. Even this institution faces opposition from certain corners and hence the Network could not produce a desired result due to various obstacles like financial constraints, lack of sufficient volunteers and due to unfriendly attitudes of the general masses towards the human rights movement. It is thus an urgent need to establish State Human Rights Commission in Mizoram as desired by the Section 21 of the Protection of Human Rights Act, 1993. As required by the Act, the Commission shall consist of

1. **A Chairperson** who has been the Chief Justice of a High Court;
2. **One Member** who is, or has been, a Judge of High Court;
3. **One Member** who is, or has been, District Judge in the state
4. **Two Members** to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.

These members are to be appointed by the State Governor on the recommendation of the Committee constituted for the purpose consisting of State Chief Minister as Chairperson and other three members from the Speaker of State Legislative Assembly, State Home Minister and Leader of Opposition in the Legislative Assembly. ⁴⁰

The Commission shall perform any of the following functions as assigned by Section 12 of the Act, like

- (a) *Inquiry into complaint of 1) Violation of human rights or abetment thereof; or 2) negligence in the prevention of such violation, by a public servant;*
- (b) *Intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court;*

- (c) *Visit, under intimation to the state government, any jail or any other institution under the control of the state government, where persons are detained or lodged for purpose off treatment, reformation or protection to study the living conditions of the inmates and make recommendations thereon;*
- (d) *Review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation;*
- (e) *Review the factors, including acts of terrorism, that inhibit the enjoyment of human rights and recommend appropriate remedial measures*
- (f) *Study treaties and other international instruments on human rights and make recommendations for their effective implementation;*
- (g) *Undertake and promote research in the field of human rights;*
- (h) *Spread human rights literacy among various sections of the society and promote awareness of safeguards available for the protection of these rights through publications, the media, seminars and other available means;*
- (i) *Encourage the efforts of non governmental organizations and institution working in the field of human rights;*
- (j) *Such other functions as it may consider necessary for the promotion of human rights.*

The need of human rights institution in the state has been exemplified by the growing complexity of the society and its consequent result on the crime rate. Incidents of human rights violations are now becoming almost a common feature of daily life in Mizoram. Reports of rapes, robbery, harassment of the minority community, denial of individual liberty, prevalence of the practice of **mob rule**, abusive behaviour and activities of NGOs has been found in news clips very often. Despite the formation of Human Rights Committee under the Chairmanship of Registrar, Gauhati High Court, significant improvement has not yet seen in matter of promotion and protection of human rights in general and to ensure enjoyment of

basic human rights and freedom provided by the Constitution. It is quite sad that the crime figure instead of declining has been rapidly increasing in the state.

Table shows Crime Figure under IPC in Mizoram during the period 1st April 2002 to 31 March 2003 and 1st April 2003 to 31st March 2004.

Sl. No.	Head of Crime	2002-2003	2003-2004
1	Murder	31	44
2	Attempt to Murder	26	35
3	Culpable Homicide	3	6
4	Dacoity	7	8
5	Robbery	11	18
6	Burglary	437	512
7	Theft	1039	1363
8	Extortion	41	43
9	Rape	67	65
10	Kidnapping & Abduction	10	9
11	Molestation	75	103
12	Cheating	80	63
13	Misappropriate / Criminal Breach of Trust	25	21
14	Counterfeiting	17	8
15	Forgery	4	10
16	Escape from Lawful Custody	10	3
17	Assault to Public Servant	16	9
18	Criminal trespass	19	18
19	Rioting	1	4
20	Affray	14	18
21	Hurt	132	127
22	Arson	24	27
23	Mischief	29	34
24	Wrongful Confinement	16	7
25	Attempt to Commit Suicide	4	-
26	Criminal Intimidation	24	8
27	Unnatural Offence	3	2
28	Motor Accident (Fatal)	33	41
29	Motor Accident (Non-fatal)	72	57
30	Of cruelty by Husband or relatives of husband U/S 498 IPC	2	3
31	U/S 188 IPC	697	804
32	Waging War Against State	-	19
33	Other IPC	54	81
	TOTAL	3023	3570

Source; SP CID (Crime) Mizoram Police

It is now seen that incidence of crime has been on the increase. Reported cases of Rape, Kidnap or abduction and Molestation as well as Cruelty of Husband or relative of husband did not mark high, yet this does not necessarily means that incidence of this kind of crimes is less frequent. The fact behind this is that due to

sensitivity involves in crime of rape, it is very difficult to acquire accurate data. Hence, actual rate of incidence may be much higher than a number of reported cases. If trusted and esteemed institution like State Human Rights Commission had been in existence in the state, various crimes very much related with violation of individual dignity and freedom shall be effectively checked. In a society like Mizo having tribal element, individual freedom and human rights need constitutional safeguards or institutionalized framework to make effort. It is thus obvious that statutory institution to entertain complaints out of human rights violation is a must. The well being of every individual is greatest importance and beneficial for the whole country. The commission would surely serve as an advisory or recommending body for the redress of grievances and in fact to make many provisions of human rights contained in the Constitution more meaningful and enjoyable to all citizens. It is thus a great interest for the state to establish Human Rights Commission at the earliest possible extent for the creation of better governance and a more humane society. The only obstacle for establishment of State Human Rights Commission like financial constraint or administrative reasons should be set aside keeping in mind how best the people could have access to the institution for redress for violations of their basic human rights.

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CHAPTER – V

**5.1 Public Bureaucracy; 5.2 Development and Human Rights in Mizoram;
5.2 Evaluation.**

5.1 Public Bureaucracy.

Public Bureaucracy in Mizoram

Max Weber, the German sociologist in his theory of 'Bureaucratic Rationality', gave the exposition of bureaucratic system of administration. He termed it as 'ideal type' or as 'rational legal' of administration or organization of the government where administrative decisions are taken at the higher level passing down to the subordinate officials in the form of chain of commands. Generally speaking, bureaucracy means organizational structure where administrative functions are being carried out by professionally trained public servants recruited on the basis of merit, enjoying permanency of tenure. Unlike the political master who are coming and going with the change of government, the bureaucrats are serving the public so long as they are in service. Due to the nature of permanency in services, they are also referred to as permanent executive. Bureaucracy is sometimes taken as synonymous with civil services or the personnel system where

the employees are classified in a system of administration, composed of hierarchy of sections, divisions, bureaus, department and the like. ¹

The beginning of bureaucratic administration in Mizoram may be traced back to the time when the British annexed the Lushai Hills Areas in 1890 AD and with the introduction of modern administrative system based on the single line of administration. The British in 1891 divided the territory into two administrative wings viz- the North Lushai Hills District, a part of Assam and the South Lushai Hills District a part of Bengal. The British government appointed Political Officers as an in charge of the respective Districts. The British once again in 1898 merged the two districts into one Lushai Hills District, as a part of Assam. This marked the actual beginning of settled administration in Mizoram (Lushai Hills District) and J, Shakespeare was appointed as the first Superintendent of the new amalgamated Districts. ²

The Lushai Hills District started functioning from April 1 1898 under the Provisions of Assam Frontiers Tract Regulation, 1880 and the Scheduled District Act, 1874. Under these Rules, the administration of Lushai Hills was carried on under the system of hierarchical structure, the Chief Commissioner of Assam, at the top, followed by the Superintendent of Lushai Hills, his assistants and the Chiefs and the Headmen of the villages. ³

At this juncture a brief discussion may be made about the administrative practices under the newly introduced administrative framework. Introduction of new system of administration ushered in a new system that replaced the then village administration under the supreme control of the traditional village Chiefs. When the British realized the efficiency, effective as well as economical administration of villages under the Chiefs, they allowed the system of administration to remain continue yet at the same time felt need of putting limitations on the powers of the chiefs. Accordingly, autocratic and whimsical natures of the powers of the Chiefs were significantly limited by the British administration. Thus, the Chiefs were reduced into mere agents of the British

Government and hence the Assam state under British-India Government took up the whole administration.

The administration of the District was run under this framework that the Superintendent was authorized to regulate the successions of deceased chiefs and to appoint guardians to minor chiefs. He could appoint chief and fixed the number of houses in a village. The superintendent was empowered to determine the village boundaries, to regulate dispute between chiefs and settle disputes among the people. Only the heinous crimes are to be reported to the Superintendent and the petty feuds or minor offences are to be tried by the chiefs. Matters relating to the Customary Laws, administration of villages, and collection of various taxes are the responsibilities of the chiefs and the same would be submitted to the Superintendent.⁴ The Chiefs were still permitted to realize taxes imposed upon the subjects as ever before. The superintendent did not interfere in the village administration except on certain important issues and heinous crimes. Ownership of land was divested from the powers of the chief and the Court of the Superintendent of the District took up major cases. This had been done by the Britishers keeping in mind the effectiveness of well-established institution of chieftainship and as a result of which the British could maintain their supremacy over the people with minimum of force and expenditures. Thus, the public administration of the hills was run with very much less expenses.⁵

At this point mention is made about position of the subjects under the new system of administration. People under the dual administration (Superintendent and the chiefs) enjoyed a very limited freedom. People were still bound to obey the autocratic powers of the traditional chiefs and at the same time required to pay taxes like house taxes, coolly or impressed labour, and any other demands by the superintendent. Truly, position of the subjects was not improved either under the new administration. According to H.Thansanga, the Superintendent was the *de facto* administrator in the Lushai Hills and the district itself became a Superintendent's District. He was empowered with such immense powers that he was truly all and all. His word was law. He could change the boundaries of the village chiefs. He had the power to create a new chief and to dismiss another chief.

The highest Court was in his hand. He allowed no political activity. He made use of the traditional chiefs as agents of British administration in their respective village or jurisdiction. ⁶ L.B. Thanga clearly describes position of the Superintendent thus, "In the case of Mizoram, the Superintendent as the head of the District resembled not merely a king but something more, if there could be such a one. To a simple tribal, something more than a king could only be supernatural, for example, a god not merely to be worshipped but to be dreaded more than respect and honour". ⁷ The Superintendent enjoyed almost undefined and unlimited powers. In important matters like judicial pronouncement like capital punishment, revenue and administrative powers, he was required to take confirmation of the Governor, but in most of the cases he rarely did so. His powers were greatly enlarged when the Government of India Act. 1935 that categorized the hill areas as Excluded Areas or Partially Excluded Areas. In reality, when the hill areas were declared as Excluded Areas, the administration of the areas became partially outside the jurisdiction of the Assam State Legislature and the laws made by the Legislature were not automatically extended to these areas except by special order, which in turn made the Superintendent free of the control of political master.

It is, thus, clear from the above accounts that people were at the mercy of the Saino chiefs and their position did not improve much even at the hands of the British administration. In many occasions, people were deprived of their freedom and were rather subjected to the autocratic nature of the powers of the chiefs. Individual or personal liberty, inherent rights of the people, gender equality etc are still unknown to them.

During the period of colonial administration, there took place two significant developments, first, abolition of custom of Bawi (household slaves) in 1927. When the British annexed Mizoram in 1890, they found the *bawi* custom abhorrent and illegal and as a result of which the Government freed many bawis appealing for freedom. The question whether the custom of *bawi* during those days had similarity with the institution of slavery

practiced elsewhere is a matter of disagreement among writers on Mizo history, yet it is obvious that the *bawis* were deprived of their personal freedom. Secondly, the traditional institution of Sailo Chieftainship that lasted for around 360 years was abolished in 1954 and since then the administration was fully run by the Government.

The system of administration continued till the Indian Constitution came into force in 1950. This brought changes in the powers of the Superintendent and the Chiefs. . The British India, under the Sixth Schedule to the Indian Constitution introduced the **Mizo Autonomous District Council** in 1952 and **Pawi-Lakher Regional Council** in 1953. The designation of the Superintendent was changed and the District administration was put under the Deputy Commissioner and the Chief Executive Members of the District and Regional Councils with much curtailed powers. The District Council was empowered with certain powers like administration of property of land, administration of justice, forests, agriculture, town management, tribal courts levy of taxes etc. The District Council had the power to make law on these subjects. The Deputy Commissioner of the district as an agent of State Government exercised powers not referred to the District Council. The administrative set up was channelized into three proper wings like- Executive, Legislative and Justice.

With the establishment of proper democratic institutions at village level to the top since 1952, there were steady developments in the fields of administration in Mizoram. The Deputy Commissioner took up the administration of the whole area except the Regional Autonomous Councils. With the passage of time his powers in the field of land management and revenue administration were increased greatly. Declaration of the Mizo Hills District as 'Disturb Area' under the provisions of the Armed Forces Special Powers Act, 1958 in the event of insurgency problems in 1966 considerably enlarged the powers and responsibilities of the Deputy Commissioner. During the course of insurgency period, his position as the ultimate custodian of law and order underwent far-reaching changes.

The Mizo District Council was upgraded to the status of Union Territory on January 21, 1972 under the provisions of the North-Eastern Areas (Re-organization) Act, 1971. The Pawi-Lakher Regional Council was trifurcated into the Lai, the Mara and the Chakma District Councils. The Government of Union Territory of Mizoram reorganized the whole territory of Mizoram, thus, Aizawl, Lunglei and Chhimituipui Districts were set up. Deputy Commissioners of three districts took over the administration in their respective jurisdictions. The Union Territory of Mizoram was again elevated to the status of full fledged state on 20 February 1987.

Administration at grass root level was taken over by the local bodies called **Village Council**; which came into existence under the **Lushai Hills District (Village Council) Act, 1953** and the **Pawi-Lakher Autonomous Region (Village Councils) Act, 1954**. Since then the administrative system was organized into a proper hierarchical form. The village council formed the lowest court in Mizoram and deals both civil and criminal cases. Above the village councils, there are public officials/administrative officers appointed by the Governor like District Local Administration Officer, Circle Officers and Circle Assistant. They are the officials through which the District Magistrate or Deputy Commissioner run the administration of the whole area. The public administration of Mizoram till today is still running on the basis of this administrative framework with certain changes made at different times.

Presently there are 8 Districts in Mizoram namely, Aizawl, Lunglei, Saiha, Lawngtlai, Champhai, Kolasib, Serchhip, Mamit and three Autonomous District Councils like Lai, Chakma and Mara. There are 23 Sub-Divisions and 22 Rural Development Blocks. As on 27.9.2004 there are 17 Administrative Heads of Department under Government of Mizoram who are from the Central and State services.

On the whole, various developments in the field of administration since introduction of single line of administration till today brought many changes that exerts great effects on the social and economic aspects of individual or community

life. Generally speaking, entire administration during the period covered in this chapter showed no much contribution for the welfare of the people making adverse effects on the economic and social aspects of the community. Corruptions, administrative inefficiency, lack of sincerity among the administrators for the realization of welfare measures enshrined in the Constitution, unjust economic developments between the remote and urban areas and even violations of basic human rights and freedoms etc featured the whole gamut of administration.

5.2 Developments and Human Rights in Mizoram.

RN Prasad defines development as “A movement from one stage to another, process of growth over a period of time. It also signifies the capacity of a political system to sustain continuous growth. In brief, development means improvement in the well being of the masses and their quality of life. Development is fundamentally an egalitarian goal. The essential theme of development has been elimination of poverty, social inequality and unemployment”.⁸ From this definition, it may be said that development refers to social transformation from the traditional to the modern society. But development must bring better facilities of human needs that will enhance quality of human life. Removal of problems like poverty, unemployment, discrimination, injustice, and inequality in all its manifestations shall be the main features of development. Thus, the main purpose of development is to spread freedom, freedom from economic poverty, social deprivation, political tyranny, or cultural authoritarianism. Development is not a mere growth on GNP or large-scale industrialization, enjoyment of civil and political rights or living in luxurious life that blessed few populations only, but it rather signifies mass freedom from deprivation, extreme poverty, societal imprisonment, authoritarianism or totalitarianism etc. It is not a mere transit from the traditional to modern society. To a precise meaning, development, therefore, means provision of basic human necessities necessary for dignified human existence for all sections of the society.

While discussing the importance of development for the enjoyment basic human requirements or human rights, Justice P.N. Bhagwati manifests development as one of the categories of human rights - **Third Generation Rights**. According to him effective access to productive and equitably paid work, sufficient nutrition, health care and hygiene, shelter, energy resources, clean water and air; education and information; fair and equitable allocation of the resources etc are essential rights inevitable for making life more meaningful and more humane. Accordingly, development must provide people with facilities and services to organize themselves to participate, monitor, evaluate and review development programmes, and processes, and to hold accountable those responsible for their implementation. Thus every social institution must be organized to bring development with all its implications for underdevelopment is a matter of denial of freedom/human rights.

Development and human rights are two concepts that are closely relating to each other as nicely put by Amartya Sen, thus, "A variety of social institutions - related to the operation of markets, administrations, legislatures, political parties, nongovernmental organizations, the judiciary, the media and the community in general - contribute to the process of development precisely through their effects on enhancing and sustaining individual freedoms".⁹

The Universal Declaration of Human Rights, 1948 also has a specific mention about importance of proper development aiming at adequate standard of living. It clearly specifies adequate standard of living as one of the basic human rights as it runs, "Everyone has the right to a standard of living adequate for the health and well being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to social security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control".¹⁰

Keeping in mind the interconnectedness of the two concepts, here an attempt is made to highlight changes and developments that had great effect on the economic, social and cultural life of the population. Emphasis is being made to

highlight economic and social welfare development measures introduced by the state administration during the recent years.

With changes of times and introduction of proper administrative frameworks in the state, developments took place in many respects. There were steady growths of population in the state. The number of population increased from 1.9 lakh in 1951 to 2.66 lakh in 1961, 3.32 lakh in 1971, 4.94 lakh in 1981, 6.93 lakh in 1991 and further to 8.88 lakh in 2001. Population growth rate is 28 percent and the sex ratio being 935. Population Density is at 42.¹¹

Following table shows population growth rate in Mizoram during the last decade.

Table-5.1

Sl. No.	Districts	% of Growth Rate during 1991-2001
1	Mamit	-2.7
2	Kolasib	35.2
3	Aizawl	38.1
4	Champhai	29.9
5	Serchhip	17.6
6	Lunglei	23.1
7	Lawngtlai	35.8
8	Saiha	33.6

Presently Mizoram stood at second highest literacy percentage among the Indian states with 88.49 % (2001 Census). With regard to the **human development index**, based on the UNDP method, calculating by working out the life expectancy average, educational attainment index, adjusted real GDP per capita index and finally dividing the sum of three indices by three, Mizoram Index is at .556 (the highest among the seven states of North East states) though a little bit lower than national average of .590.¹²

This trend has been possible because of continuous progress on the education and health sectors.

Table 5.2
Table Showing District Wise No. of Household, Population, Literacy.

Sl. No.	Districts	No. of Household	Population	% of Literacy Rate
1	Mamit	12253	62785	79.1
2	Kolasib	14053	65960	91.3
3	Aizawl	64753	325676	96.5
4	Champhai	22059	108392	91.2
5	Serchhip	10116	53861	95.1
6	Lunglei	27889	137223	84.2
7	Lawngtlai	13902	73620	64.7
8	Saiha	11109	61056	82.2

Source : Statistical Handbook, Mizoram, Directorate of Economic and Statistic, 2004.

It may be seen from the above table that Aizawl district has the highest population followed by Lunglei, Champhai, Lawngtlai, Kolasib, Mamit, Saiha and Serchhip. It is interesting to note that 36.65 % (325676) of total population of the state is living in Aizawl district. This has been possible mainly because of the fact that Aizawl District is the biggest in terms of area, most advanced, highest growth rate (Growth rate in Aizawl District during the period 1991-2001 is 38.1%) and urbanization has been on a great scale as a result of which many people migrated to Aizawl due to political and economic reasons. From the table it is also seen that Aizawl district ranks top in terms of Literacy percentage (96.5 %) and Lawngtlai and Mamit districts have the least literacy percentage at 64.7 % and 79.1% respectively. This figure indicates that Lawngtlai and Mamit districts having the most population of minority communities like Chakma, Bru and other sub-tribes are lagging behind others in terms of development in the fields of education, and other basic requirements for the up-gradation of their living standard.

If development were to be judged from the degree of urbanization, position of Mizoram would not be far behind. Mizoram stands first in terms of most urbanized states of the country with 46.33 percent of urban population in 1991. There was only 2 notified towns in 1971 that increased to 6 in 1981 and presently the number increased to 22. Amongst various factors responsible for rapid urbanization following points may be mentioned,

Firstly, introduction of the policy of Village Grouping by the Government during the insurgency period was a major factor. According to Lalhmingliana over 35% of the total population was shifted to the periphery of the capital and new sites for security reason during 1966-70. Many villages were forcefully shifted from their villages to the new grouping centre and this scheme marked the first landmark in the history of urbanization in Mizoram.

Secondly, availability of various facilities likes Health Services, Water, Electricity, Employment opportunities, Commercial and shopping, Linkages etc, and concentration of all important government offices in Aizawl increased pace of urbanization in Mizoram.

Finally, the mindset of the political leaders of successive governments in Mizoram and permanent executive/public officials played a great role in bringing urbanization. Government officials at all levels favored for concentration of development investment only in Aizawl by neglecting both the rural and other urban areas. There were serious unequal development investments between the state headquarters and the urban centres. While many amenities and facilities in health and other opportunities are available in Aizawl, other urban areas are very much lagging behind. Pace of development is very high in the state headquarters yet rural or remote areas are in serious need of life amenities. Public officials are responsible for all these kind of uneven distribution/allocation of development funds between the urban and rural areas.

As mentioned earlier, presently there are 22 notified towns in Mizoram and the population of these urban areas has increased significantly due to political, administrative and economic reasons.

Table 5.3.
Table showing No. of Population, Household, Literacy Rate of Notified Town of Mizoram.

Sl. No.	Name of Towns	Population	Household	Literacy Rate(%)
1	Sairang	5034	976	96.5
2	Saitual	10966	2623	95.6
3	Darlawn	3865	749	94.3

4	Aizawl	228280	44812	97.4
5	Khawzawl	10954	3319	86.7
6	Champhai	26465	5230	94.2
7	Khawhai	2403	460	94.7
8	Biate	2227	400	97.1
9	Vairengte	7715	1927	92.3
10	Bairabi	3304	639	93.1
11	Kolasib	19008	3877	96.2
12	N.Kawnpui	6472	1405	96.0
13	Tlabung	3681	874	89.1
14	Lunglei	47137	9798	97.2
15	Hnahthial	7138	1697	92.0
16	Zawlnuam	3120	632	90.8
17	Mamit	5110	977	95.1
18	Lengpui	2423	532	94.6
19	Saiha	19826	3350	93.4
20	Serchhip	17096	3226	95.8
21	Thenzawl	5507	1053	97.5
22	N.Vanlaiphai	3275	627	96.7
	Total	441006	89183	

Source : Statistical Handbook, Mizoram, Directorate of Economic and Statistic, 2004.

From the above figure, it may be seen that 49.64% (441006) of the total population of Mizoram live in urban areas. It means that about half of the total populations are living in rural areas. Literacy percentage among the people in notified town areas is quite high, the average of which is 90.7%. In this regard, it may be said that the state administration in the field of education attained great success in imparting systematic education among urban people that could make such a high degree of urban literacy percentage. The overall performance of the state administration in education is quite satisfactory. It is observed that formal educational system reaches every corner of the state. According to **Statistical Handbook, Mizoram 2004**, there are 1504 Primary Schools, 908 Middle Schools, 443 High Schools and 71 Higher Secondary Schools (both Govt. and Private) in Mizoram. Student enrolment at three levels of education like Primary, Middle and High Schools during the year 2004 was 2,03,838. With regard to the establishment of the school building in Mizoram villages, State Education Department achieved a remarkable success as 89% of villages in Mizoram have school buildings whereas position of the state of Kerala is only at 61%. (Seventh Education Survey, 2002) Student enrolment in the college level in Mizoram during the year 2004 was 5138 (including Govt. Deficit and private Colleges). All these figure shows that education

has been successfully flourished in Mizoram as a result of which Mizoram attains second highest literacy percentage at national level. Success of the state government in education sector has been possible partly because of implementation of centrally sponsored schemes like Sarva Shiksha Abhiyan (SSA), Mid-Day Meal Programme and Adult Education for removal of adult illiteracy in the state.

The living condition of the people of Mizoram in general is also satisfactory to some extent comparing to all India situation. The 58th Round National Sample Survey Report 2006, reveals that Mizoram ranks comparatively high among the North Eastern States of India in term of distribution of rented Dwelling Units with different numbers of living rooms.

Table 5.4

Table showing Distribution of Dwelling Units with Different Numbers of Living Rooms In the North East India (percentage)

SI No.	Name of State	1 Living Room	2 Living Rooms	3 Living Rooms	4 & above living Rooms
1	Arunachal Pradesh	51.42	37.94	8.98	1.66
2	Nagaland	11.39	44.73	32.77	11.12
3	Manipur	17.24	26.72	35.67	20.38
4	Mizoram	12.43	36.59	31.87	19.12
5	Tripura	54.27	35.93	7.09	2.71
6	Meghalaya	29.24	42.8	18.33	9.63
7	Assam	28.12	34.58	29.16	8.15

Source : Housing Condition Survey of NSS 58th Round 2006

Classification of the Indian population into three distinct classes depicts the economic and social status of the people. In this regard position of Mizoram is comparatively satisfactory to some extent comparing with others states.

Table 5.5

Table showing State-wise percentage distribution of Indian population falling under different classes:

SI No.	State/UT	Population Class		
		Poor	Middle	Affluent
1	Jammu & Kashmir	7	84	9

2	Himachal Pradesh	7	68	25
3	Punjab	19	70	11
4	Chandigarh	7	58	35
5	Uttaranchal	44	50	6
6	Haryana	16	74	10
7	Delhi	9	60	31
8	Rajasthan	25	68	7
9	Utter Pradesh	44	50	6
10	Bihar	55	41	4
11	Sikkim	15	76	9
12	Arunachal Pradesh	28	65	7
13	Nagaland	1	75	24
14	Manipur	23	75	2
15	Mizoram	4	84	12
16	Tripura	21	66	13
17	Meghalaya	2	88	10
18	Assam	33	59	8
19	West Bengal	29	62	9
20	Jharkhand	55	41	4
21	Orrissa	48	49	3
22	Chhatisgarh	42	53	5
23	Madhya Pradesh	42	53	5
24	Gujarat	19	71	10
25	Daman & Diu	7	79	14
26	D&N Haveli	12	58	30
27	Maharashtra	22	64	14
28	Andra Pradesh	33	59	8
29	Karnataka	24	65	11
30	Goa	5	75	20
31	Lakshadweep	4	85	11
32	Kerala	23	64	13
33	Tamil Nadu	25	64	11
34	Pondicherry	24	69	7
35	A&N Islands	3	79	18

Source: 58th Round NSS Report 2006

From the above tables (Tables 5.4 & 5.5), it is seen that situation of Mizoram is not very unpleasant comparing with the national figures and North Eastern Regions respectively. Nagaland ranks first in term of proper dwelling units followed by Mizoram in the North East region. In this regard state government deserves credit for its successful implementation of certain measure like **Poverty Alleviation Programme** directly funded by the Government of India. The Programme aiming at **Seven Basic Minimum Services of Goals** like a) Roof for homeless persons, b) Midday meal for poor school children, c) Primary education for every child, d) Drinking water for all, e) Primary health care, f) Roads connecting all villages, g) Fair price shops with concession prices, etc is being implemented in the state with much success.

The Department of Food, Civil Supplies and Consumer Affairs is realizing the above objectives by giving rice at *Subsidized Rate* to the poorer sections of the population. Under this scheme school children are also provided with mid-day meal at free of cost. This programme covered 1352 schools and the amount of food grain distributed for mid-day meal amounts to 18378.59 quintals during the year 2005-06. A large number of families got benefits from this scheme.

Table.5.6

Table showing District-Wise Foodgrain Distributed Under Subsidized Rate for the Year 2005-2006

<i>Name of district</i>	Quantity of Foodgrain Distributed (in quintals)				
	APL Families	BPL Families	AAY Families	Mid-Day Meal	Total
Champhai	132510.00	50526.00	420.00	2687.02	186143.02
Kolasib	27753.00	20055.00	273.60	1294.91	49376.51
Mamit	31540.00	24931.20	208.80	1500.44	58175.44
Saiha	82051.00	24066.80	420.00	1158.24	86096.04
Lunglei	79130.00	50946.00	360.00	2970.93	133406.93
Lawngtlai	55926.00	23352.00	420.00	2508.21	82206.21
Aizawl	311229.00	76133.40	855.60	4989.76	393207.76
Serchhip	51331.00	15590.40	141.60	1269.08	68332.08

Total 1056943.99 MT

Source : Directorate of Food, Civil Supplies and Consumers Affairs. Govt.of Mizoram.

Apart from the above Programmes, the state government implements various other schemes for the improvement of the living condition of the poor sections of the population. The performances of the state government in this regard are quite remarkable and for this reason, position of Mizoram is quite satisfactory among the North Eastern states. There are also remarkable achievements in the fields of implementation of programmes for development of rural poor. Programmes like Employment Assurance Scheme (EAS), Integrated Rural Development Programme (IRDP), Jawahar Rojgar Yojana (JRY), Indira Awas Yojana (IAY), Training for Rural Youth for Self-Employment (TRYSEM), Development of Women and Children in Rural Areas (DWCRA), Special Development Scheme (SDS), Rural Youth Employment Guarantee Scheme, Food for Work, Swarnijayanti Gram Swarajgar Yojana (SGSY), Sampoorna Grameen Rojgar Yojana (SGRY), Integrated Wasteland Development Programme (IWDP), Jawahar Gram Samridhi Yojana (SJSY), Pradhan Mantri Gramadaya Yojana

Gramin Awaas (PMGYGA), Innovatives Streams for Rural Housing and Habitat Development (ISRH&HO), Credit-cum-Subsidy Schemes for Rural Housing, etc are being implemented with great success which improved the condition of the rural poor to some extent. Moreover development stagnation due to insurgency in the state was over now and as a result of which various developmental programmes could have been carried on with no many obstacles. During the Post Peace Agreement period, developmental schemes are being carried on at a great pace. Due to all these reasons, the state of Mizoram is comparatively better than seven states of the North East as well as with national level in terms of classification of population and distribution of dwelling units.

5.3 Evaluation

Despite this colourful picture, there still remain undeniable facts that an alarming number of families are without proper home in Mizoram. Number of homeless families in urban areas has increased to an extreme extent during the last few years. The problem became more and more acute with the progress of urbanization in and around Aizawl city. The state government neither takes adequate initiative for provision of housing for homeless families living in urban areas nor provides chance to them to escape from the problems as they are struggling for their mere existence.

The right to Housing as human rights has been recognized since the adoption of the Universal Declaration of Human Rights in 1948. Article 25 (1) of the Declaration recognizes that everyone has the right to a certain standard of living...including food, clothing and housing. Internationally, this right to adequate housing find acceptance. The Indian Constitution also contains various welfare provisions under the Directive Principles of State Policy in Chapter IV.

Provision of proper shelter to shelterless families has been the prime challenge for the Central Government. For the realization of this task, the

Government of India in the last few years has announced a long awaited national housing policy. This policy is expected to benefit 23.3 million unit houseless population of India and the estimated cost for providing shelter for this number is estimated at a minimum of Rs. 3000 billion ! ¹³

It is thus clear from the above that right to have proper shelter has been recognized as one of the basic human rights. The Indian Constitution that guarantees Right to Life also includes right to life with dignity. The implication is that for a proper enjoyment of human rights, provision of shelters to every family is a must and in fact, feasibility of every other right is still questionable in the absence of proper home for a family.

Looking into the situation of Mizoram the matter became a serious concern for a good number of families emigrating from remote area to the capital city or even in other urban areas. Recent trend indicates that the problem is becoming more and more serious as there has been large-scale immigration of rural people to urban areas during the last few decades. Due to concentration of life amenities and various others facilities for development in Aizawl, many people are migrating from rural to the urban centre. Yet due to comparatively high prices of basic necessities and a higher living standard in urban area, immigrants from rural areas have to struggle for their bare necessity. As a matter of fact, for poor families from rural areas, buying of a plot of land and construction of house in and around Aizawl city is a mere dream due to severe economic hardship. In such a situation where the problem instead of declining keep on increasing, development bringing better opportunities for majority population shall remain unrealized. The construction of most advanced trading centre called *The Aizawl Millennium Market*, at the centre of Aizawl and flock of latest models of motor cars including foreign one in Aizawl streets and clusters of huge buildings in Aizawl city have nothing much to do with majority sections of the population of Mizoram. There is no doubt that some people in Aizawl cities are living in huge buildings and enjoying luxurious life but at the same time half of the population living in rural areas are still lacking various life necessities and are still struggling for their bare existence. Development, according to Amartya Sen must have a direct bearing on the general masses that they must

be free from hunger, lack of human basic necessities, etc. The essential theme of development like elimination of poverty, social inequality and unemployment is still unrealistic in the state. Thus, development, ensuring a condition of good and civilized life of the general masses and socio-economic improvement of the deprived and unprivileged sections of the society is the need of the hour.

Attention must also be given on the problem of poverty in the state. Whereas it is accepted that the state government achieved a remarkable results on Health and Education sectors, yet extreme poverty still affected majority population. It is presently estimated that there are 49.94 % of the total population are below Poverty Line in the state. It is argued that standard criteria for below poverty line like calorie intake at 2400 and 2100 per individual for urban and rural people respectively or individual income per month at Rs 454.11 and Rs 211.30 for urban and rural population respectively are not properly followed in Mizoram. The Village Councils, entrusted to make a list within their respective jurisdictions fail to follow the above criteria thereby opening chances of political favouritism. Thus, due to lack of clarity, certain families not actually poor are also included in the list due to expectation of benefits like subsidized supply of food grains and other labour opportunities provided for the BPL family. As such many middle class families are included in the list due to their party affiliation to the party in power. Nevertheless, it is still an undeniable fact that a good number of families are lacking their basic necessities and alarming numbers of families are below poverty line in the state.

Table 5.7

Below Poverty Line Family Figure in District Headquarters of Mizoram as on 20.9.06

Name of District Headquarters	No. of BPL families	No. of household	Percentage
Aizawl	13922	44,812	31.6%
Lunglei	2076	9,798	21.19%
Saiha	1030	3,350	30.75%
Lawngtlai	899	Not available	-
Champhai	2076	5,230	39.7%
Kolasib	1388	3,877	35.80%
Serchhip	1725	3,226	53.48%
Mamit	759	977	77.7%

Source : LAD. SJSRY Cell. Govt. of Mizoram

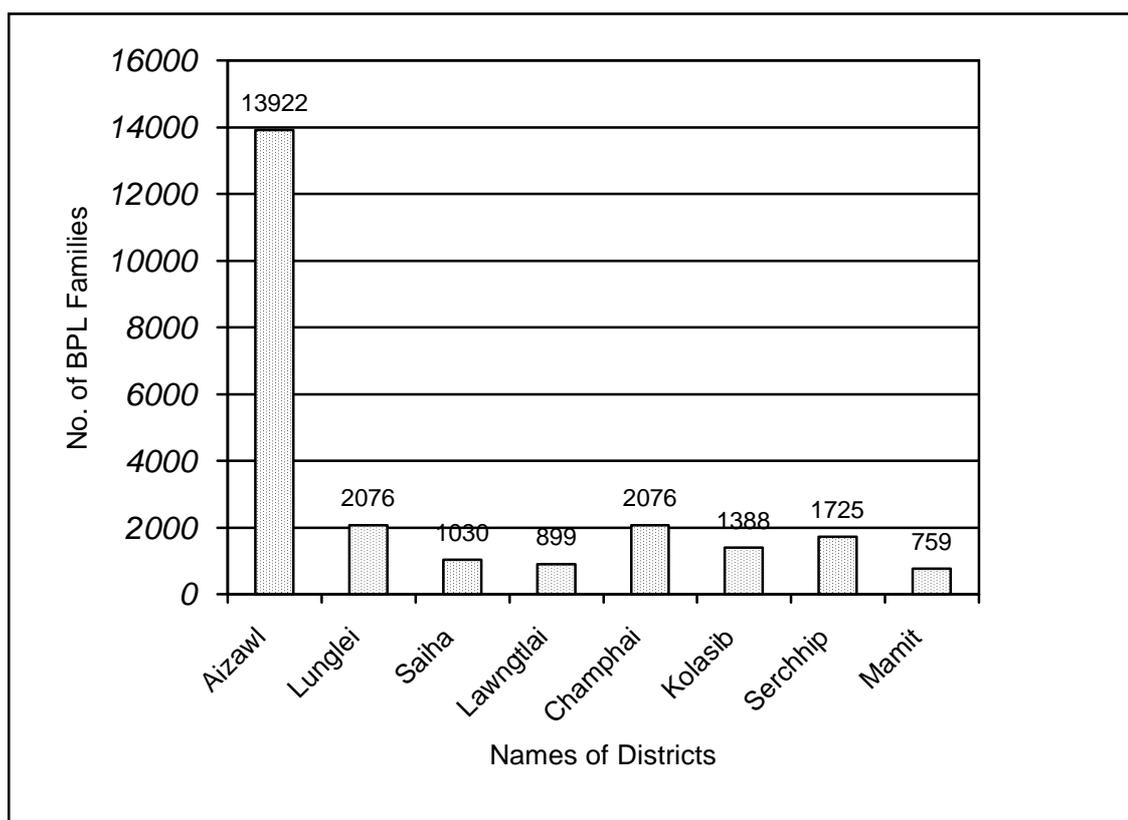


Chart Showing Numbers of BPL Families in All District Headquarters of Mizoram

With regard to the findings of the National Sample Survey (NSS), 2006 in respect of the classification of the population into three categories like Poor, Middle and Affluent families, position of Mizoram is comparatively better than other states of the North Eastern India and also with national level. (See Tables 5.4 & 5.5) The finding, however, cannot be taken as a true indicator of the actual living standard of the general population. It may be perhaps correct to assume that majority section of the population belongs to the middle class and only a few numbers of families are under the poor category as per the NSS findings. But this does not necessarily mean that Mizoram attains satisfactory achievement on the human development. As mentioned earlier, the human development index for the North-East India is hovering at .431 that is lower than country's average of .590. This indicates that the North Eastern states including Mizoram are still lagging behind the national level in terms of life expectancy average, educational attainment index and adjusted real GPD per Capita Index.

Classification of Dwelling Unit in Mizoram also depicts a pleasant situation of Mizoram. Mizoram occupies second best position among the North Eastern states in this regard yet this does not mean that people of Mizoram are economically sound. Due to lack of economic sustainability in the state, many families living with proper shelters are still struggling for their bare subsistence as most of the population is still relying on the monsoon blessings. Despite heavy investments on the agriculture sector under the state government, traditional form of cultivation is the main occupation for majority of the population and more sadly due to lack of proper marketing system for agricultural products, monthly income of average families is still irregular. Hence for this practical reason, economic hardship remains a regular feature of the society. It means that those families even with proper housing are still affected by extreme poverty. This further indicates that development in Mizoram in various sectors have nothing much to do with the improvement of the living condition of the population for it does not have a direct bearing on the life expectancy and per capita income. It means that improvement in road communication, infrastructures benefited only a few section of the advantageous section of the population and unfortunately poor people are excluded from the fruits of developments. Poverty remains rampant and as such number of BPL family instead of declining still on the increase. In this context, it is suggested that the state government must take concerted effort to realize basic human rights like **rights to adequate food and health** ensuring right to a standard of living adequate for health and well-being. The importance of this right has been recognized at national and international levels. Article 25 of the UDHR lays down that everyone has the right to a standard of living adequate for health and well being of himself and of his family, including food, clothing, housing and medical care and necessary social service, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. Again, states in India are required to raise the level of nutrition, and the standard of living of its people and the improvement of public health. ¹⁴ It is a high time for the state administration to put these obligations into practice and more emphasis needs to be given on the welfare aspect of development.

At this point attention shall be given to the problem of unemployment in Mizoram. Rapid development in education has brought acute unemployment problem in the state. During the last few years there arose obvious sign of frustration among the unemployed educated young men. They started taking their own initiative by forming pressure group like Educated Unemployed Association, All Mizo Graduate Unemployed Association (AMGUA). In these groups, thousands of educated unemployed enrolled themselves as members and exerting continuous pressures on the state government for their future carriers. Number of educated job seekers is on the increase year by year.

Table 5.7

Table showing figure of Job Seekers registered in Aizawl Employment Exchange as on March 2006.

SI No.	Category	Regn for Month		Live Register		Total
		M	F	M	F	
1	Unskilled	1	18	943	492	1435
2	MSLC	162	46	9597	4623	14220
3	HSLC	60	45	4419	3268	7687
4	PUC	26	38	2374	1558	3932
5	B.A.	13	10	1461	1024	2485
6	B.A. (Hons/Major)	4	1	470	355	825
7	B. Sc.	1	2	138	46	184
8	B.Sc (Hons/Major)	1	-	105	120	225
9	B.Com.	5	1	163	72	235
10	B.Ed.	-	1	21	24	45
11	B.Pharm	-	-	2	2	4
12	MBBS	-	-	41	52	93
13	Dental Surgeon	-	-	6	11	17
14	B.E.	1	-	75	17	92
15	B.V. Sc	-	-	2	5	7
16	B.Lib Sc	-	-	3	1	4
17	B.P.Ed	-	-	1	-	1
18	LL.B	-	-	3	-	3
19	B.D. (Theology)	1	-	2	-	2
20	M.A.	6	5	436	530	966
21	M.Sc	1	-	64	56	120
22	M.S.W.	-	-	5	7	12
23	M.V.Sc	-	-	1	-	1
24	M.Lib Sc	-	-	3	4	7
25	PGJMC	-	-	1	-	1
26	M.Phil	-	-	-	3	3
27	M.Com	2	-	44	26	70
28	M.E.	-	-	1	-	1
29	M.PIng	-	-	1	-	1
30	M.Tech (MURP)	-	-	1	-	1
31	M.Ed.	-	-	2	-	2
32	MBA	-	-	-	1	1

33	Typist	-	-	-	74	74
34	Driver	4	-	349	-	349
35	Conductor	-	-	24	-	24
36	Hindi	115	290	352	947	1299
37	Tech.Trade(EXTT)	6	17	1068	1681	2749
38	Physically handicapped	2	1	23	14	37
39	Others	-	-	245	75	320
	Grand Total	411	475	22446	15088	37534

Success on education sector in Mizoram is a remarkable one. By March 2006, position of the state in literacy is at 90.27 %, which is very closed to Kerala, 90.90 %. Yet it is felt that education aiming at improvement on health, employment, labour, child development, sustained economic development, improvement in the quality of life and socio-economic transformation etc is not yet realize. Therefore, it may be suggested that qualitative improvement in state education system needs to be developed to reduce problem of unemployment. It is an undeniable fact that a mere high literacy percentage cannot be taken as a criterion for a society a developed one. Quality education suited to provide employment opportunities not only under the state government within the state but also at national or even abroad is highly needed otherwise cherished objectives of the education shall never be realized among the educated or jobless youth.

Again, it is quite alarming to learn that number of dropt out students in Mizoram is increasing thereby crossing the national average. According to Human Resource Development Ministry, 56 % and 70 % of students of primary schools and High Schools respectively left the school before completion of education in their respective levels in Mizoram. Siddhartha Dutta, Indicus Analytics Private Limited in his comparative study of education between Kerala and Mizoram conducted recently observed that the main reason of non-completion of education in Mizoram is acute unemployment problem. (Business Standard Website)

It is, therefore, felt necessary to bring state educational system towards the goals of **National Policy of Education of 1986** that envisaged a radical transformation of the educational system to relate it more closely to the lives of the people, provide expanded educational opportunities, initiate sustained intensive effort to raise the quality of education at all stages, emphasize the development of

Science and Technology and cultivate moral and social values. Education system in the state must strive for the fullest development of human potential of every person through enlarging the coverage and improving the quality of education. Hence standard educational system ensuring equity and social justice is an urgent need. In this regard responsible public officials must take concerted effort by framing state educational system to meet requirements of the present society.

At this point the concept of Good Governance in the realm of bureaucracy need to be tested in the state administration. Some examples of good governance like achievements on education; health and public distribution are seen in Mizoram, yet the main challenges of development-improvement of the quality of life remain only a dream concept and ground realities still remain a misnomer. Good governance creating employment opportunity, improving standard of living, better health facility for everyone, creating chances for human development is an urgent need. In a process of development in the state, only a few advantageous people are reaping the fruits of development whereas majority poor people are excluded.

The prevalence of rampant corruption is another serious matter. Administrative functionaries at all levels seem to be more interested in making money by wrongful means rather than delivering the goods to the public. It seems that the entire administration including political masters are indulging in corruption thereby denying the public of the benefits of development. There are various corruption scandals under successive state governments both during the Congress's rule (1989-1998) and the MNF rule (1998-2000) like-Lunglei Greater Water Supply Scheme Scandal involving Rs 14 crores: it was widely believed that the original estimated cost of the project was greatly increased to benefit contractors, officials and Ministers involved in the project; Serlui B Hydroelectric Project: after spending Rs 500.00 lakhs, the entire project was simply abandoned; Purchase of Toilet Vans at the cost of Rs 60.00 lakhs all of which remain lying unused till this day and some of them even sold as scraps ! (Toilet vans in fact become a but of jokes in the state) and the purchase of shocks at extremely high rate of Rs 1600.00 per pair for the state police personnel under the Police Modernization Scheme: none of them actually being used by the police

themselves. These instances are in fact only a tip of an iceberg of the very many cases of misappropriation of public money by unscrupulous administrative officials, contractors and politicians.

Corruption is, in reality, a serious violation of human rights for it has deprived the people of means (purchasing power or money) to realizing human right ideals such as basic necessities like food, water and shelter. The unavailability or inaccessibility of these basic needs very often further deny people a chance to enjoy other rights like freedom, liberty, justice, equality, etc. to the fullest. In other words, unless the poor are economically well off at least to a certain point, or unless the fruits of development actually reach the poor, human rights shall continue to remain a mere dream for the countless citizens of this great democracy that is India. It is a pity that the state administration has chosen to remain more or less a mere spectator of this malaise that is now seriously affecting both efficiency of the administration and societal peace and tranquility. The insensitivity of the administration on corruption, and hence human rights violations, can be gauged from the fact that the state's Anti-Corruption Branch (ACB)-the agency established specifically to check corruption of 'public servants' is manned mostly by people largely considered mediocre in official circles, and the ACB is not granted autonomy as it is directly controlled by the state government and recruitments, promotion and transfer of all the officials in the ACB are done by the state government. Till date, no serious punishment has ever been given to those officials found guilty by the ACB; some of those found guilty of practicing corruption to the tune of several lacks of rupees are even being set free with a simple reprimand.

For proper realization of the main objective of development as opined by Amartya Sen, enhancement of human freedom should be the main target. In this regard, it is emphasized that majority share of the total budget should be earmarked for developmental activities. As per the budget allocation for the current financial year in Mizoram, some major developmental departments made budgetary allocation for salary and wages as under (in percentage).

- 1 Food, Civil Supplies and Consumers Affairs-46.94%
- 2 Education-79.29%
- 3 Medical and Public Health Services-72.74%
- 4 Agriculture-13.74%
- 5 Rural Development-26.36%
- 6 Industries-35%
- 7 Transport-60.82%

It is clear from the above that more than half of the total budgets are spent on salaries and wages. Truly, at present almost 80% of budgetary allocations are spent on salary and establishments, leaving no room for developmental activities. It is now suggested that budgetary allocation of public fund should be arranged public oriented and in this regard down-sizing of administrative structures of government may be continued with sincerity so as to avoid unnecessary expenditure on the salaries and establishments due to overstaffing.

Again, as mentioned in the beginning paragraphs of the present chapter, public administration in Mizoram since it's beginning has been carried out with administration of colonial nature that gave more emphasis on the negative functions of the state by neglecting the welfare aspects. The Superintendent of the Lushai Hills District took over the administration by depriving powers and functions of the traditional village chiefs. He exercised such an immense powers that he became almost sovereign authority. Under such circumstance people were deprived freedoms but to give blind obedience to him. Even after the establishment of democratic village administration in 1954, the Village Councils were entrusted with a limited powers and only limited administrative powers and judicial functions of petty nature. The system of village administration till today has been continued, as was started some 50 years ago yet with some changes. In brief, democratic decentralization is still a mere dream in the state, the administration of village is not in line with the true concept of Local Self-Government, in the sense that, village councils are functioning as agent of the state government, performing only the agency role and did not enjoy the decision making powers and financial autonomy.

Hence, absence of democratic decentralization in the administrative system in Mizoram give the people a sense of non-involvement in the political processes that control their daily lives. This is a serious matter making obstacles for proper development of the grass-root level upon which the whole administrative structure depends. In this regard, it is felt that implementation of the Constitution (Seventy-Fourth Amendment) Act, 1992 is an urgent need. The same Act needs to be implemented to provide Municipalities for the administration of urban areas in 23 notified town areas. Implementation of this Act may be the only remedy for some major problems in urban areas like unemployment, congestion, shortage of housing, growth of slums, straining urban services and amenities, drinking water, pollution, transportation, drug addictions and increase in crime rates leading to security problems etc.¹⁵

It is thus finally argued that, all developmental programmes and schemes may be rearranged to give more emphasis on the welfare of the general masses. A social phenomenon that erodes egalitarian society in Mizoram needs to be checked at an immediate course. The whole process of development need to carry on under the true democratic forms of administration from top to bottom levels, the legal system, market structures, educational and health and other facilities needs to be restructured with the main objective of enhancement of quality of human life. The ends and means of development call for placing the perspective of freedom at the centre of the stage. The people have to be seen, in this perspective, as being actively involved-given the opportunity- in shaping their own destiny, and not just a passive recipients of the fruits of canning development.¹⁶

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CHAPTER – VI

6.1 Concluding Remarks/Findings.

Human Rights have assumed significance in the present world society. Many nations in the world, are concerned with the protection and assurance of fundamental human rights in its various manifestations and dimensions. As human rights violation is a matter of individual and personal tragedy, which creates conditions of unrest sowing the seeds of violence, therefore, promotion and safeguarding of human rights is the most challenging task ahead of this era.

Human rights are those rights, which are inherent in our nature and without which, we cannot live as human beings. The Protection of Human Rights Act, 1993 has defined the term as “*The right relating to life, liberty, equality and dignity of the individual guaranteed by the Constitutions or embodied in International Covenants and enforced by courts in India*”.¹ The main theme of human rights movement is upliftment of human kind in general, and improvement of the lot of downtrodden masses in particular. They are essential for human dignity and worth. Its enjoyment allows us to develop fully and use our human qualities, our intelligence, our talents and our conscience and to satisfy our spiritual and other needs.

Human Rights is a dynamic concept and endeavours to adopt itself to the needs of the day. For this reason it attains new dimensions with the march of

history. Hence, what the western society emphasized about its implications like civil and political rights proved insufficient for the poor people of the underdeveloped/ developing countries. In fact, feasibility of civil and political rights mentioned in various international human rights instruments during the initial stage of the movement made it obvious to develop a new dimension of human rights to what is now called as the **Third Generation Rights**, referring right to development.

Therefore, for millions of starving people around the world, human rights would mean freedom from unjust economic structure, freedom from starvation and freedom from deprivation of opportunities etc. In other words, the social and economic aspects of human rights shall be the main concern of human rights. It is an urgent need to ensure or at least to provide minimal subsistence to neglected and deprived section of the people. It is for this reason that until and unless more emphasis is given to the developmental aspect of human rights, feasibility of civil and political rights will be questioned and challenged. Thus, from this point of view, human rights means a movement that targeted to remove socio-economic maladies for proper realization of dignified human existence and for the adequate development of human personality.

The concept of human rights is an old one. Some scholars trace its origin back to the times of ancient Greek. Its concept gained a good ground with the rise of the concept of natural rights founded on natural law which proclaimed that every human being possesses rights by virtue of being human. They preached the idea of universal brotherhood of mankind and laid stress upon the equality and freedom for all. Romans developed the same by developing more systematic conception of the term on the basis of the custom and as well as by the application of reason.² Again, the protagonists of the concept of Social Contract Theory contributed a lot for the development of the concept of human rights. However, development of human rights for practical purposes was seen when the United Nations Organization was established on 24th October, 1945 and consequently the first ever document on human rights, the Universal Declaration of Human Rights was proclaimed by the Body on 10, December 1948. This Declaration has rightly been described as the International Magna Carta of all mankind, as it constitutes a

landmark in the history of human rights. This Declaration, indeed has exercised a profound influence over the world and as such exerted profound influence on the making of the Indian Constitution.

So influenced and concerned about the need of promotion and protection of human rights India became signatory to the Universal Declaration of Human Rights, 1948. Following the adoption of the UDHR, 1948 quite numbers of international human rights instruments are made and adopted under the UN auspice. In most of these Declarations, Conventions and Covenants India became a signatory. As per the National Human Rights Commission Annual Report 2001-2002, there are now some seventy international human rights instruments that have been adopted under the auspices of the United Nations of which India is a state party to some sixteen Conventions or Covenants.³ In an effort to make human rights more meaningful and enjoyable for the Indian citizens, comprehensive provisions of human rights have been incorporated in the Indian constitution under Part III (Article 12-35) and in Part IV (Article 36-50). Further, India is not just a signatory to these Covenants but has also made efforts towards implementing them by enacting the Protection of Human Rights Act of 1993.⁴

Despite various measures and efforts being taken at the international level, global situation in terms of promotion and protection of human rights is not improved much. Realization of the cherished ideals like peace, security, development and fundamental freedoms are still distant dreams for almost half of the population of the world. Extreme poverty remains a daily reality for more than 1 billion people who subsist on less than \$ 1 a day. Hunger and malnutrition are almost equally pervasive; more than 800 million people have too little to eat to meet their daily energy needs. More than a quarter of children under age 5 in developing countries are malnourished. More than 11.5 million children of primary school age do not receive proper education. Every year, almost 11 million children die that means 30,000 children die every day. Most of these children live in developing countries and die from a disease or a combination of diseases that can be prevented or treated by existing inexpensive means. Sometimes, the cause is as simple as lack of antibiotics for treating pneumonia or of oral dehydration salts

for diarrhea. Malnutrition contributes to over half of these deaths. The most fatal and incurable disease like HIV/AIDS affected 39 million people around the world in 2004 and the number increased to an alarming degree.⁵ These are in fact true indicators of lack of basic necessities indicating denial of human rights around the globe.

The global situation marks another serious set back when the new economic policy was introduced since 1990. Globalization that was believed to bring economic improvement of the world population proved rather negative. The assertion by the protagonists of Globalization that it will accelerate progress in developing countries is also belied by the UNDP's Tenth Human Development Report (HDR), which states that, "market dominated globalization has led to the growing marginalisation of poor nations and its peoples, with growing inequality and the benefits accruing to the richest to the richest people and countries". In a message delivered by the then Secretary General of UN, Kofi A Anan on October 2003 in observance of the *International Day for the Eradication of Poverty* reminded the world community that, "How many times have we said that it (poverty) was incompatible with human dignity. But billion of people are still trying to survive... with no drinking water, health care, or access to education, still denied the jobs that would help them escape their impoverished state, and thus, still deprived of some of their most basic rights". Thus, the global situation in the event of and after the Globalization depicts no improvement for people living in developing and under-developed countries. After Globalization, the gap between the haves and the have-nots is staggering; the richest fifth have an income 74 times that of the poorest fifth.⁶

Situation in India shows no positive sign towards securing basic human necessities since mid 1991 when the New Economic Reform, stressing market led development was introduced. The 36 percent of the world's 1.3 billion poor earning less than one dollar a day live in India and thus India is accommodating the largest number of world's poor.⁷ The New Economic Policy (liberalization, privatization/globalization) under the slogan of 'let the market decides' that emphasizes market led development instead of state led development now make

the situation more unsuitable for realization of various constitutional provisions under Chapter IV aiming at the welfare of the people. It is an undeniable fact that role of the state has been on the decline and in such a circumstance, the word 'socialist' which is a Preamble provision to the Constitution of India, lost its validity. The Indian Political system instead of the socialist society, has been giving more emphasis on the building up of capitalist oriented society. As a result of these trends, there grows increasing gap between the rich and the poor. Again this trend further leads to the uneven regional development, economic imbalance between rural and remote areas, acute unemployment problems and extreme poverty. This is in reality a true indicator of denial of basic necessities needed for the dignified and humane existence. In other words, various social and economic rights guaranteed under the provisions of the Indian Constitution are being denied to majority of the Indian population. Mass populations are excluded from the fruits of developments under the capitalist led economic policy. More sadly, the state institution upon which disadvantaged sections of the population seek equal justice withdraws itself from market manipulated economic activities. Therefore, what else may be expected from capitalist economic system that benefiting few people thereby denying vast majority of economic and social justice. It would be a mockery to expect socio-economic improvement of the poor people from profit driven market economy. Promotion and protection of human rights of citizens including rights of the neglected/disadvantaged population therefore is an urgent need and in this regard state institution must involve in a larger degree even in the context of economic globalization otherwise there are obvious reasons fear of greater danger in a country like India.

Looking into the situation in Mizoram context, it is noticeable that the fundamental freedom and individual dignity enshrined in the Indian Constitution do not get its proper places. It is an alarming fact that reports of rape cases, broad daylight robbery and killings, abductions and kidnaps, violation of individual freedom, alleged corruption cases etc. are coming from various corners. In fact, human rights violations become almost everyday phenomena. More sadly, the commutative effects of the capitalist path of development brought the decay of egalitarian society that opens chances of social stratification on the basis of

income, land possession, social status; paving the way for decline of close-knit homogeneous society. The new economic policy is found unfriendly to the tribal society like Mizo. Only a few ruling and propertied classes are reaping the fruits of development yet majority population are deprived chances of improvement. State intervention in every developmental programme has been on the decline whereas market led development benefiting the advantageous section of the society has been on maximum growth. In such a situation problems like unemployment, lack of proper development for rural people comprising around 80 percent of the total population of Mizoram, lack of medical facilities for neglected class, denial of gender equality, and a growing gap between the rich and the poor etc, are obvious in Mizoram. Under this circumstance, enjoyment of human rights enshrined in various international human rights instruments in general and the rights enshrined in the Constitution in particular are still a distant dream.

Keeping in mind, all these harsh realities, it is now imperative to make some remarks/suggestions as follows.

1. International human rights treaties and conventions adopted and proclaimed in the earlier stages of human rights movement like, the Universal Declaration of Human Rights, 1948, the International Covenant on Economic, Social and Cultural Rights, 1966, The International Covenant on Civil and Political Rights, 1966, The Convention on the Prevention and Punishment of the Crime of Genocide, 1948. International Convention on the Elimination of All Forms of Racial Discrimination, 1965, International Convention on the Suppression and the Punishment of the Crime of Apartheid, 1973, Convention on the Elimination of All Forms of Discrimination Against Women, 1979, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment, 1984, Convention on the Rights of Child, 1989. etc must be fully implemented and realized. It is further suggested that more emphasis may be given towards realization of the economic, social and cultural rights over the western favoured human rights aspects like civil and political liberties. In other words, main focus needs to be directed towards the people of underdeveloped countries of Sub-Saharan Africa, Asian and Latin countries. Concrete and meaningful means needs to be formulated at UN or other

international levels to make various human rights contained in ICESCR more accessible or enjoyable for people of poorer of the poor countries. Again it is stressed that the indivisibility, universality and interdependency of human rights especially in respect of social and cultural rights must be understood. Equal importance of two aspects of human rights likes; civil and political rights on one hand and economic, social and cultural rights on the other must be emphasized. In this regard, it is further suggested that top priority may be given to what some scholars referred it as Third Generation Rights or Right to Development. Until and unless vast population of the poor countries are developed culturally, economically or socially what the advanced countries continuously seeking for individual freedom or political or civil rights would never have practical meaning for almost majority of the world population.

2. It is also very important to ensure human rights on the basis on 'cultural relativism' or 'cultural specificity'. This implies that human rights must be applied and interpreted according to different cultural values. The industrialization, colonization and globalization which had great impact on the social structures and behaviours on the world's poor must be clearly understood and hence efforts may be taken to protect underdeveloped countries from imposed behaviour from the developed countries.

The question of cultural specificity appears to be more relevant in a Mizoram context. Contemporary Mizo society presents a contrasting picture of various hues and colours in its structure. Although such concepts as class and caste are unknown, nevertheless, there is a sharp division between the haves and have-nots. The ideals of an egalitarian society as reflected in the Mizo fables and folklores of yesteryears are now a thing of the past. Standards of living now vary widely not only in the urban areas but also in the less-urbanised areas. In spite of these, yet, there exist several mechanisms responsible for uniting almost all of the Mizo into a single, homogenous order where status, wealth or offices do not seem to matter. No one doubts that institutions play a pivotal role in holding the Mizo society together since its recorded history. Such all-embracing institutions as the Churches and the Young Mizo Association (YMA) practically permeate every

aspect of the life of a Mizo. With the result that the society becomes a close-knit one, and traditional values and norms are still dictating the people's lives, their perceptions, and their world-view at large. By no means is Mizoram left out in the fast-track move towards modernization and, ultimately, globalization. And access to information has become relatively fast, easy, and cheap with the increasing use of the Internet.

It is in this light that the issue of human rights needs to be seen, tackled, and understood, and looking at the present scenario, one feels that concepts such as human rights do not find much favour among the Mizo people, the reason for which can be put to downright ignorance, or, complete negation of the concept itself. It is the general opinion that the concept of human rights carries with it 'individualism' in the Western sense of the term, and this ultimately creates a fear psychosis in the minds of the people that the practical application of the principles of human rights would violate the general norms and values of the society. That is, if every individual be aware of his/her rights and these be exercised, then, it is felt that the communitarian ethos of the society would be badly damaged (for instance, throughout the state, every locality has its own set of rules and regulations laid down by leaders of different NGOs, and every member of the locality is supposed to abide by these. This itself puts into question whether the state government's law and order machinery has the ultimate authority or not. And the controversial role civil society is playing in Mizoram. It is thus a vital importance to take efforts human rights movement in Mizoram yet with slight change to adopt Mizo ethos or cultural pacificity.

3. Universality of human rights need to be emphasized everywhere regardless of culture, religion, customs or ideology. The *Vienna Declaration* necessitates universality of human rights, thus,

"While the significance of national; and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of the states, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms"

Universality of human rights is also clearly expressed by the UDHR under Article 2 of the Declaration, “ *Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty*”.

The above instruments made it clear that the human rights is universal in nature. Human rights are the rights of very human being irrespective of his social status, religion, sex, and territorial status. The notion that prevailed in most of the oriental societies including India in general and Mizoram in particular ‘that human rights are the rights of the western people’ need to be changed. Human Rights aiming at the well-being of all people including the oriental and sub Saharan poor countries need to be emphasized.

4. The right to development or third generation rights that took a concrete form since 1970 must be emphasized especially under the New International Economic Order. It is essential to codify this category of human rights by virtue of the fact that collective need for national progress has priority over individual rights. Until and unless people affected by extreme poverty are liberated from lack of basic human necessities required for dignified life, feasibility of first and second-generation rights proved futile.

5. Concerted efforts need to be given for the fulfillment of *The Millennium Development Goals* deriving from the United Nations Millennium Declaration adopted by 189 nations in 2000. The Declaration constituted an unprecedented promise of the world leaders to address, as a single package, peace security, development, human rights and fundamental freedoms. Keeping in mind the interconnectedness of all these ideals and objectives of the Declaration aiming at halting extreme poverty; to halting the spread of HIV/AIDS affecting people everywhere from New York to Nairobi to New Delhi, it is an avoidable task for

world communities to give sincere effort to achieve objectives set forth in the Declaration. Kofi A Annan, the last Secretary General of UN rightly remarked challenge thus, *“Let us be clear about the costs of missing this opportunity; millions of lives that could have been saved will be lost; many freedoms that could have been secured will be denied; and we shall inhabit a more dangerous and unstable world”*.⁸

6. It is suggested that Structural Reform of UN may be made to remove the main obstacle for realization of various provisions of international human rights instruments. The composition of the most effective organ of UNO-the Security Council may be enlarged in order to make the organ more true representatives of world communities. This will enhance the functioning of the organ for the realization of various international human rights treaties and conventions. Only when of the is UN structural reformed, the UN presently functioning as per the dictate of Washington administration may give attention addressing the basic requirements of the poorer of the poor countries.

7. Dissemination of human rights literatures through systematic education is an urgent need. Recognizing the importance of awareness on human rights, the United Nations give the message-‘know your rights’. In fact the first sentence of the Preamble of the UDHR states that recognition and respect for human rights is the ‘foundation of freedom, peace and justice in the world’. Article 26 (2) of the same Declaration says that, “education shall be directed for the full development of the human personality’. Human Rights Education is essential because only the people who are aware of their rights can ensure that their rights will not be trampled on. Learning about one’s own rights builds respect for the rights of others and gives confidence to assert them.⁹

Education on human rights making individual conscious of the basic and inalienable rights of others, regardless of sex, language, religion and other social and economic condition need to be disseminated to make a person more responsible citizen not only for his own country but of the world. Therefore, education aiming at better understanding of the whole concept with its implications

and ramifications need to be introduced in education at all stages. It is emphasized that Government decision makers and public officials need to have a fresh look in framing the educational system in the state. Programmes and educational curriculum need to be changed to inculcate human rights awareness to the new generations.

Education on human rights is still a matter of something neglected in India despite continuous efforts from the NHRC. Fortunately enough, the State Education System in Mizoram do not yet introduce human rights education till date. In this regard mention may be made about United Nation's effort for human rights education. The last decade, i.e 1990-2000 was declared as '*Decade for Human Rights Education*' by the UN and made a strong appeal to all its member states to take initiative for the realization of this objective. The NHRC also made strong appeal to UGC to start Human Rights Faculty in all University. However, actual implementation still remains unseen in this state. Hence, introduction of the human rights studies from the bottom to the top educational system is an urgent need.

State Government decision makers as well as University authority must take effort to realize this requirement. It is learned that the highest educational institution in the state, Mizoram University established in 2001, took initiative for the introduction of Post-Graduate Diploma Course in the Department of Public administration, yet sadly enough, all the initiatives made in this regard still unrealized and nothing positive has been obtained in this regard. Further, it is stressed that, an existing Law College needs to be provincialized or to Governmental status. Qualitative Education on law and widespread Legal Awareness is the need of the hour in the state.

8. Realization and observation of human rights involve some preconditions. Conditions that are essential for the full realization of human rights are specifically contained in the Preamble to the Constitution of India. It is specifically mentioned in the Document that the Indian themselves resolved to constitute India into a Sovereign, Socialist, Secular, Democratic, Republic. There are some other provisions in the Indian Constitution guaranteeing every citizen necessary conditions for dignified and more humane life. The Fundamental Rights and the

Directive principles of states Policies under Chapter III and IV of the Indian Constitution are in its true sense chapters on Human Rights. But quite sad, the Indian political system never take required measures for the realization of the cherished principle expressed in the Preamble to the Indian Constitution and other provisions found under Chapter III and IV of the Indian Constitution. Prasad rightly expressed, thus, "*The Indian Political System instead of the socialist society, has been building up a capitalist oriented society. Which is why the word socialist in Indian context is rhetoric, vague and irrelevant*".¹⁰ Again adoption of New Economic Policy in Indian society is a sheer violation of the Indian Constitution. Capitalist pattern of economy has never been a poor friendly policy and the same is very much true in the Indian context. Under the new economic policy the state has been withdrawing herself from economic activities which brought serious economic maladies and this in fact is in its reality a violation of human rights and socio-economic provisions of the Indian Constitution.¹¹ There may be a valid point on the argument that there is no escape from this economic liberalization but there is no a proper reason to believe that big private companies and private undertaking mainly driven by profit motif would turn themselves for the promotion and protection of human rights of the poor people. It is therefore suggested here that arrangement must be made to regulate the activities of multinational or heavy private undertakings at least to a certain reasonable limits and in the meantime state must not escape from her obligations to serve the people and better attention need to be made to realize/ensure various constitutional obligations.

9. Implementation of the Protection of Human Rights Act, 1993 is the most remarkable step taken by the Government of India. The Act was passed and implemented by the Indian Parliament to provide for the constitution of a National Human Rights Commission, State Human Rights Commission in states and Human Rights Courts for better protection of Human Rights and for matters connected therewith or incidental thereto. As per Chapter II, clause (I) of section 3 of the Act, the Government of India constituted the National Human Rights Commission on 12 October 1993. The Commission right from its inception has been achieving many concrete results. During the first decade of its working, the Commission has evolved from being a body that was initially viewed with

skepticism to one that is widely viewed as an instrument of redressal, on which increasing reliance is being placed by the citizens of India to ensure the defence of their rights. However, due to some operational problems, an overall performance of the Commission is not up to the requirements of the Indian society. It is in this light suggestions may be as under.

Firstly, Appointment provision for composition of NHRC may be amended to remove its erroneous nature. The Act provides that two members are to be appointed from person having knowledge or practical experience in matter relating to human rights. This is too vague. It is essential that instead of appointing a person having a mere knowledge on human rights, a person who is working or had worked in the field of human rights need to be appointed to ensure the Commission's commitment to human rights cause. Again in matter of selecting members to the Commission, it is strongly felt that the Chairman of the Commission, the Chief Justice, the Press and Editors Guild may be included to ensure complexity of the Commission Selection Committee.¹²

Secondly, The Act may be amended to give more scope for prevention of human rights violations occurring both in the domain of State and Civil society. The Act confines itself to addressing the human rights violation only by the state institutions. It ignores human rights violation at various other levels, outside the domain of the state. The Act can be more effective if its area of concern will appropriately focus on ever growing roles of Non Governmental Associations and on the terrorism issue.

Thirdly, the provision of the Act fixed a one-year period as the duration of filing of complaint. With the series of socio-cultural factors impeding the immediate filing of complaints, it would be more realistic, if the NHRC entertains cases where there has been reasonable and purposeful delay in the making of the delay.

Fourthly, Regarding the Armed Forces, the Act should enlarge NHRC's jurisdiction to inquire into violation of human rights when they indulge in excess.¹³ Realizing various operational problems and technical difficulties involved in the Act, itself, the

Commission moved proposal for amendments on the existing Act and then in March 2000 transmit its proposals to the Central Government. However, it is quite sad to learn that the Government still pending proposals submitted to it by the Commission till today. No positive sign have not yet received from the Government in this regard.

Finally, The Government of India should comply with the obligations enjoined upon it by the Act itself. Serious indifference shown to the Commission by the Government caused ineffective working of the Commission. Annual Reports prepared by the Commission were laid before the Parliament overdue and most of the remarks and suggestion contained in the Reports were hardly accepted by the Government. This is a clear indication of Government's indifference towards the actual working or effective realization of the human rights provision in Indian context. More sadly, states in India failed to comply with the continuous requests of the Commission for the formation of State Human Rights Commission. So far only 15 states have formed State Human Rights Commissions. Hence, it is suggested that the Central Government in closed collaboration with the NHRC may make more stronger and compulsive request to states where SHRC have not yet been established. This direction will expectedly bring significant forwarding step for the realization of the Act.

10. Human Rights friendly behaviour of the police personnel is one of the most important foundations of human rights culture. There is no doubt that maintenance of law and order, detection of crime, booking of criminals, prevention of anti-social and criminal etc, are the very corner stones of police functioning.¹⁴ Nevertheless, the police personnel of India from the Director General to the lowest ranks appears to incline to think that they can behave in manner they like, and the public opinion hardly matters because they are the custodians of the law. They are in many occasions are found having human rights unfriendly behaviour. Their callous behaviour upon the public has made the public losing their trust upon the law and order administration in India.

The Police functionaries of all ranks in Mizoram are not free from this defect. With the changes of time and growing complexity of the Mizo society, many instances of law and order problems are now coming up in Mizoram. Amongst many other things, the main challenge for the state law and order in the state is a growing role of the Non Governmental Organizations. Exercise of unlimited powers by the NGOs like Mizo Zirlai Pawl (MZP) and Mizo Students Union (MSU), the Young Mizo Association (YMA), Village Defence Party, (VDP) various Joint Action Committee (JAC) formed to realize diverse objectives etc caused serious problems of maintenance of law and order in Mizoram. There are also instances where the unscrupulous sections of the few people, creating problems, conflicts/tensions for non-Mizo in the name of protecting and preserving Mizo from economic and social assimilations. They are found doing unwanted activities towards their fellow citizens, inviting unnecessary tensions between the Mizo and non-Mizo. All these pose problems for the law enforcement agencies in the state. Sadly enough, there are instances, the NGOs imposed curfew for non- Mizos (not to get out of their residence for their own safety) and not on the Mizos. This is in reality, a matter of violations of human rights contained under Chapter III of the Indian Constitution and this practice hardly offer help to the law and order enforcing agencies in maintaining law and order. ¹⁵

In order to bring improvement in the matter of law and order enforcement in the state and for the establishment of human rights culture among the police personnel, it is now emphasized that the District Police Officer or Superintendent of Police must be equipped with the power to deal with a law and order situation in the district at least to meet immediate requirements. In many a time it is learned that consultation between the District Commissioner and the Superintendent of Police takes time almost preventing the police personnel to take urgent measures. Undue interference of the politicians in the police administration needs to be checked. Police personnel must be betterly equipped with modern techniques including proper training on human rights in order to bring changes on the behaviour of the personnel. In this connection, it is further suggested that **The Women Cell** (Estb. 1998) at Aizawl Police Station needs to be properly equipped with more staffs and better establishment. The existing **Forensic Science**

Laboratory, which has been in existence since 2000 under the State Home Department, must be well equipped with modernized techniques and better establishment. Direction issued by the Ministry of Home Affairs to each and every state and UT for the improvement of State Forensic Science Laboratory on the basis of study report made by the **Core Group** need to be realized at earliest extent. Unfortunately, Mizoram Forensic Science Laboratory does not get proper development as per the recommendation of the Ministry of Home Affairs till today. Therefore, it is propose here that state government in Mizoram must give concrete effort for the improvement of Forensic Science Laboratory.

11. Fair and impartial Judicial administration based on based on the principles of equality and judicial independence is the main foundation of human rights culture.

The administration of justice in Mizoram is being carried on in a very simple and rude form since the Indian independence. Justice is maintained on the basis of well established Mizo Custom and modern legal system. But due to the introduction of modern system of legal justice to that of the system of justice based on customary laws in Mizoram, the Mizos have failed to get the better of the two systems. Only the well-to-do persons in the Mizo society have been beneficiaries of this confused state of judicial administration. This trend is in fact a matter of denial of justice for the poor people. Therefore, it is suggested that while the courts constituted under the provisions of Sixth Schedule to the Constitution of India in Mizoram and the other Sixth Schedule areas of Northeast India continued operating, suitable restructuring of the court system in the state is obviously needed with more powers of judicial officers, having degrees in law, so that they are able to play important part in the process of rule-adjudication in these areas.¹⁶

Another most serious complication in the judicial administration of justice in Mizoram is absence of separation of judiciary from the executive control. Even though the necessity of independence of Judiciary has been felt at international or national levels, separation of judiciary has not yet been practice in Mizoram till today. It is thus an inevitable duty for the state government to take concrete measure for the realization of this requirement. There is no valid reason for not

separating judiciary from executive in Mizoram having the most literate population among the Indian Union. ¹⁷

12. It is in this background that formation of State Human Rights Commission in Mizoram is an urgent need as desired by Section 21 of the Protection of Human Rights Act, 1993. Establishment of State Human Rights Commission would strongly indicate the degree of our state Government's commitment to human rights cause. It is in fact quite essential to have an institution to which citizens may seek redress of violation of their rights and at the same time will relieve the arduous work of the state judicial administration. While *fifteen states* have so far established State Human Rights Commissions, there is no positive effort for the formation of Human Rights Commission in the state. It is thus much needed to form statutory institution to entertain complaints out of human rights violation. The well being of every individual is greatest importance and beneficial for the whole country. The commission would surely serve as an advisory or recommending body for the redress of grievances and in fact to make many provisions of human rights contained in the Constitution more meaningful and enjoyable to all citizens. It is thus a great interest for the state to establish Human Rights Commission at the earliest possible extent for the creation of better governance and a more humane society. The only obstacle for establishment of State Human Rights Commission like financial constraint or administrative reasons should be set aside keeping in mind how best the people could have access to the institution for redress for violations of their basic human rights.

At this point, it may be essential to make a little bit elaboration about the rampant violation of human rights in Mizoram. Yet the general public, including the NGOs like YMA and MZP are seem to be not much conscious about whether people's rights are violated or not. Although much of its leaders are derived from the upper middle class, with some of them having strong intellectual background, their unawareness and in fact, scorn over 'human rights' is perplexing.

In the absence of State Human Rights Commission in Mizoram, the Guwahati High Court set up Human Rights Committee under the chairmanship of

the Registrar, Guwahati High Court, Mizoram Bench at Aizawl since 2002. However, the Committee's performance in its venture is quite unknown to the public.

There is, in the state, one NGO which is now taking a vanguard position towards the protection and promotion of human rights in Mizoram. The Human Rights and Law Network: Mizoram, established in 2003, has been responsible for educating the people about the principles of human rights and awareness of the law. Since its inception, it has taken up varied issues relating to the rights of women, children, prisoners, and has been vehemently opposed to the use of violent methods by NGOs to curb social evils. The efforts of the Human Rights and Law Network are now increasingly recognized not only throughout the state but also outside of it. It also runs a website wherein various information relating to human rights are clearly spelled out in the Mizo and English languages. The Network, being the only association of its kind in the state, now in its third year of existence, seems to be taking a major role towards the fight for justice and the protection and promotion of human rights in Mizoram. Yet again in this regard, quite sadly, the Network (HR&LN) faces obstructions from various corners including the YMA. This is in fact, an indicator showing an awful position of the state in terms of promotion and protection of human rights. It is therefore strongly suggested here that mass awareness campaign on human rights literacy should be carried on in the state. Further, the leaders of NGOs of different kinds must be provided with systematic knowledge on the theme so as to make them behaving human rights friendly in all their ventures. It is emphasized that the Human Rights Committee set up by the Guwahati High Court, Aizawl Bench, Mizoram needs to be made more active and more prompt in its venture.

13. Development targeting general welfare of the people must be the main objective of the State Government. All the developmental schemes and projects must be made people oriented. Public officials engaging in this field need to have a fresh look in discharging their duties. More emphasis must be made to realize human development to ensure right to life in all its ramifications. Right to life mentions in Article 21 of the Indian Constitution does not mean a mere existence

but to live with dignity and freedom from starvation. Therefore, a mere physical existence without availability fundamental attributes like food, shelter, and medical facilities should be the main concern of the public authorities. Both the decision makers as well as Government Officials should take growing numbers of Below Poverty Line (BPL) families both in the urban and rural areas as serious concern. The capitalistic pattern of development needs to be readjusted to realize the welfare interests/needs of the poor rural people/masses comprising around 80 percent of the total population of Mizoram.

14. Keeping in mind the growing unemployment problems and serious frustration cropped up among the youth, it is suggested here that State Education System should be restructured to meet the changing requirements. It is, therefore, felt necessary to bring state educational system towards the goals of **National Policy of Education of 1986** that envisaged a radical transformation of the educational system to relate it more closely to the lives of the people, provide expanded educational opportunities, initiate sustained intensive effort to raise the quality of education at all stages, emphasize the development of Science and Technology and cultivate moral and social values. Education system in the state must strive for the fullest development of human potential of every person through enlarging the coverage and improving the quality of education. Hence standard educational system ensuring equity and social justice is an urgent need. In this regard responsible public officials must take concerted effort by framing state educational system to meet requirements of the present society.

15. At this point the concept of Good Governance in the realm of bureaucracy need to be tested in the state administration. Some examples of good governance like achievements on education; health and public distribution are seen in Mizoram, yet the main challenges of development-improvement of the quality of life remain only a dream concept and ground realities still remain a misnomer. Good governance creating employment opportunity, improving standard of living, better health facility for everyone, creating chances for human development is an urgent need. In a process of development in the state, only a few advantageous people are reaping the fruits of development whereas majority poor people are excluded.

16. The prevalence of rampant corruption is another serious matter. Administrative functionaries at all levels seem to be more interested in making money by wrongful means rather than delivering the goods to the public. It seems that the entire administration including political masters are indulging in corruption thereby denying the public of the benefits of development. Corruption is, in reality, a serious violation of human rights for it has deprived the people of means (purchasing power or money) to realizing human right ideals such as basic necessities like food, water and shelter. The unavailability or inaccessibility of these basic needs very often further deny people a chance to enjoy other rights like freedom, liberty, justice, equality, etc. to the fullest. In other words, unless the poor are economically well off at least to a certain point, or unless the fruits of development actually reach the poor, human rights shall continue to remain a mere dream for the countless citizens of this great democracy that is India. It is a pity that the state administration has chosen to remain more or less a mere spectator of this malaise that is now seriously affecting both efficiency of the administration and societal peace and tranquility. The insensitivity of the administration on corruption, and hence human rights violations, can be gauged from the fact that the state's Anti-Corruption Branch (ACB)-the agency established specifically to check corruption of 'public servants' is manned mostly by people largely considered mediocre in official circles, and the ACB is not granted autonomy as it is directly controlled by the state government and recruitments, promotion and transfer of all the officials in the ACB are done by the state government. Till date, no serious punishment has ever been given to those officials found guilty by the ACB; some of those found guilty of practicing corruption to the tune of several lacks of rupees are even being set free with a simple reprimand. Therefore, it is an urgent need for the state administration to take stern action to equip the ACB with more powers and autonomy for realization of the purpose for which it had been established. Corruption endangering the whole social life must be fought with strong determination.

17. For proper realization of the main objective of development as opined by Amartya Sen, enhancement of human freedom should be the main target. In this

regard, it is emphasized that majority share of the total budget should be earmarked for developmental activities. It is learned that more than half of the total budgets are spent on salaries and wages in Mizoram. Truly, at present almost 80% of budgetary allocations are spent on salary and establishments, leaving no room for developmental activities. It is now suggested that budgetary allocation of public fund should be arranged public oriented and in this regard down-sizing of administrative structures of government may be continued with sincerity so as to avoid unnecessary expenditure on the salaries and establishments due to overstaffing.

It may be summarily stated here that all developmental programmes and schemes may be rearranged to give more emphasis on the welfare of the general masses. A social phenomenon that erodes egalitarian society in Mizoram needs to be checked at an immediate course. The whole process of development need to carry on under the true democratic forms of administration from top to bottom levels, the legal system, market structures, educational and health and other facilities needs to be restructured with the main objective of enhancement of quality of human life. The ends and means of development call for placing the perspective of freedom at the centre of the stage. The people have to be seen, in this perspective, as being actively involved-given the opportunity- in shaping their own destiny, and not just a passive recipients of the fruits of canning development.

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APPENDIX –I

Universal Declaration of Human Rights, 1948.

Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948

On December 10, 1948 the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights the full text of which appears in the following pages. Following this historic act the Assembly called upon all Member countries to publicize the text of the Declaration and "to cause it to be disseminated, displayed, read and expounded principally in schools and other educational institutions, without distinction based on the political status of countries or territories."

PREAMBLE

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, Therefore THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both

among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1. All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3. Everyone has the right to life, liberty and security of person.

Article 4. No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6. Everyone has the right to recognition everywhere as a person before the law.

Article 7. All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8. Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9. No one shall be subjected to arbitrary arrest, detention or exile.

Article 10. Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11.

(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12. No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13.

(1) Everyone has the right to freedom of movement and residence within the borders of each state.

(2) Everyone has the right to leave any country, including his own, and to return to his country.

Article 14.

(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.

(2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15.

(1) Everyone has the right to a nationality.

(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16.

(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

(2) Marriage shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17.

(1) Everyone has the right to own property alone as well as in association with others.

(2) No one shall be arbitrarily deprived of his property.

Article 18. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19. Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20.

(1) Everyone has the right to freedom of peaceful assembly and association.

(2) No one may be compelled to belong to an association.

Article 21.

(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

(2) Everyone has the right of equal access to public service in his country.

(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22. Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23.

(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

(2) Everyone, without any discrimination, has the right to equal pay for equal work.

(3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

(4) Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24. Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25.

(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26.

(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

(3) Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27.

(1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28. Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29.

(1) Everyone has duties to the community in which alone the free and full development of his personality is possible.

(2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

(3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30. Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

APPENDIX-II

The Protection of Human Rights Act, 1993

An Act to provide for the constitution of a National Human Rights Commission, State Human Rights Commission in States and Human Rights Courts for better protection of Human Rights and for matters connected therewith or incidental thereto.

Be it enacted by the parliament in the forty-fourth year of the Republic of India as follows-

Chapter I

PRELIMINARY

1. Short title, extent and commencement

- (1) This Act may be called the Protection of Human Rights Act, 1993.
- (2) It extends to the whole of India. Provided that it shall apply to the State of Jammu and Kashmir only in so far as it pertains to the matters relatable to any of the entries enumerated in List I or List III in the Seventh Schedule to the Constitution as applicable to that State.
- (3) It shall be deemed to have come into force on the 28th day of September, 1993.

2. Definitions.

- (1) In this Act, unless the context otherwise requires-
 - (a) "armed forces" means the naval, military and air forces and includes any other armed forces of the Union;
 - (b) "Chairperson" means the Chairperson of the Commission or of the State Commission, as the case may be;
 - (c) "Commission" means the National Human Rights Commission under section 3;
 - (d) "human rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India.
 - (e) "Human Rights Court" means the Human Rights Court specified under section 30;
 - (f) "International Covenants" means the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on the 16th December, 1966;
 - (g) "Member" means a Member of the Commission or of the State Commission, as the case may be, and includes the Chairperson;
 - (h) "National Commission for Minorities" means the National Commission for Minorities constituted under section 3 of the National Commission for Minorities Act, 1992;
 - (i) "National Commission for the Scheduled Castes and Scheduled Tribes" means the National Commission for the Scheduled Castes and Scheduled Tribes referred to in article 338 of the Constitution;
 - (j) "National Commission for Women" means the National Commission for Women constituted under section 3 of the National Commission for Women Act, 1990;
 - (k) "Notification" means a notification published in the official Gazette;

- (l) "Prescribed" means prescribed by rules made under this Act;
 - (m) "Public servant" shall have the meaning assigned to it in section 21 of the Indian Penal Code;
 - (n) "State Commission" means a State Human Rights Commission constituted under section 21.
- (2) Any reference in this Act to a law, which is not in force in the State of Jammu and Kashmir, shall, in relation to that State, be construed as a reference to a corresponding law, if any, in force in that State.

Chapter II

THE NATIONAL HUMAN RIGHTS COMMISSION

3. Constitution of a National Human Rights Commission

- (1) The Central Government shall constitute a body to be known as the National Human Rights Commission to exercise the powers conferred upon, and to perform the functions assigned to it, under this Act.
- (2) The Commission shall consist of:
 - (a) a Chairperson who has been a Chief Justice of the Supreme Court;
 - (b) one Member who is or has been, a Judge of the Supreme Court;
 - (c) one Member who is, or has been, the Chief Justice of a High Court;
 - (d) two Members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.
- (3) The Chairpersons of the National Commission for Minorities, the National Commission for the Scheduled Castes and Scheduled Tribes and the National Commission for Women shall be deemed to be Members of the Commission for the discharge of functions specified in clauses (b) to (j) of section 12.
- (4) There shall be a Secretary-General who shall be the Chief Executive Officer of the Commission and shall exercise such powers and discharge such functions of the Commission as it may delegate to him.
- (5) The headquarters of the Commission shall be at Delhi and the Commission may, with the previous approval of the Central Government, establish offices at other places in India.

4. Appointment of Chairperson and other Members

- (1) The Chairperson and other Members shall be appointed by the President by warrant under his hand and seal.

Provided that every appointment under this sub-section shall be made after obtaining the recommendations of a Committee consisting of

- (a) The Prime Minister —Chairperson
- (b) Speaker of the House of the People — Member
- (c) Minister in-charge of the Ministry of Home Affairs in the Government of India — Member
- (d) Leader of the Opposition in the House of the People — Member
- (e) Leader of the Opposition in the Council of States — Member
- (f) Deputy Chairman of the Council of States — Member

Provided further that no sitting Judge of the Supreme Court or sitting Chief Justice of a High Court shall be appointed except after consultation with the Chief Justice of India.

- (2) No appointment of a Chairperson or a Member shall be invalid merely by reason of any vacancy in the Committee.

5. Removal of a Member of the Commission

(1) Subject to the provisions of sub-section (2), the Chairperson or any other Member of the Commission shall only be removed from his office by order of the President on the ground of proved misbehaviour or incapacity after the Supreme Court, on reference being made to it by the President, has, on inquiry held in accordance with the procedure prescribed in that behalf by the Supreme Court, reported that the Chairperson or such other Member, as the case may be, ought on any such ground to be removed.

(2) Notwithstanding anything in sub-section (1), the President may by order remove from office the Chairperson or any other Member if the Chairperson or such other Member, as the case may be

(a) is adjudged an insolvent; or

(b) engages during his term of office in any paid employment out side the duties of his office: or

(c) is unfit to continue in office by reason of infirmity of mind or body; or

(d) is of unsound mind and stands so declared by a competent court; or

(e) is convicted and sentenced to imprisonment for an offence which in the opinion of the President involves moral turpitude.

6. Term of office of Members

(1) A person appointed as Chairperson shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier.

(2) A person appointed as a Member shall hold office for a term of five years from the date on which he enters upon his office and shall be eligible for re-appointment for another term of five years. Provided that no Member shall hold office after he has attained the age of seventy years.

(3) On ceasing to hold office, a Chairperson or a Member shall be ineligible for further employment under the Government of India or under the Government of any State.

7. Member to act as Chairperson or to discharge his functions in certain circumstances

(1) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the President may, by notification, authorise one of the Members to act as the Chairperson until the appointment of a new Chairperson to fill such vacancy.

(2) When the Chairperson is unable to discharge his functions owing to absence on leave or otherwise, such one of the Members as the President may, by notification, authorise in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

8. Terms and conditions of service of Members

The salaries and allowances payable to, and other terms and conditions of service of, the Members shall be such as may be prescribed. Provided that neither the salary and allowances nor the other terms and conditions of service of a Member shall be varied to his disadvantage after his appointment.

9. Vacancies, etc., not to invalidate the proceedings of the Commission.

No act or proceedings of the Commission shall be questioned or shall be invalidated merely on the ground of existence of any vacancy or defect in the constitution of the Commission.

10. Procedure to be regulated by the Commission

- (1) The Commission shall meet at such time and place as the Chairperson may think fit.
- (2) The Commission shall regulate its own procedure.
- (3) All orders and decisions of the Commission shall be audited by the Secretary-General or any other officer of the Commission duly authorised by the Chairperson in this behalf.

11. Officers and other staff of the Commission

- (1) The Central Government shall make available to the Commission :
 - (a) an officer of the rank of the Secretary to the Government of India who shall be the Secretary-General of the Commission; and
 - (b) such police and investigative staff under an officer not below the rank of a Director General of Police and such other officers and staff as may be necessary for the efficient performance of the functions of the Commission.
- (2) Subject to such rules as may be made by the Central Government in this behalf, the Commission may appoint such other administrative, technical and scientific staff as it may consider necessary.
- (3) The salaries, allowances and conditions of service of the officers and other staff appointed under sub-section (2) shall be such as may be prescribed.

Chapter III

FUNCTIONS AND POWERS OF THE COMMISSION

12. Functions of the Commission

The Commission shall perform all or any of the following functions, namely :

- (a) inquire, suo motu or on a petition presented to it by a victim or any person on his behalf, into complaint of

- (i) violation of human rights or abetment thereof or
 - (ii) negligence in the prevention of such violation, by a public servant;
- (b) intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court;
 - (c) visit, under intimation to the State Government, any jail or any other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection to study the living conditions of the inmates and make recommendations thereon;
 - (d) review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation;
 - (e) review the factors, including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures;
 - (f) study treaties and other international instruments on human rights and make recommendations for their effective implementation;
 - (g) undertake and promote research in the field of human rights;
 - (h) spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means;
 - (i) encourage the efforts of non-governmental organisations and institutions working in the field of human rights;

(j) such other functions as it may consider necessary for the protection of human rights.

13. Powers relating to inquiries

(1) The Commission shall, while inquiring into complaints under this Act, have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908, and in particular in respect of the following matters, namely :

- (a) summoning and enforcing the attendance of witnesses and examine them on oath;
- (b) discovery and production of any document;
- (c) receiving evidence on affidavits;
- (d) requisitioning any public record or copy thereof from any court or office;
- (e) issuing commissions for the examination of witnesses or documents;
- (f) any other matter which may be prescribed.

(2) The Commission shall have power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to, the subject matter of the inquiry and any person so required shall be deemed to be legally bound to furnish such information within the meaning of section 176 and section 177 of the Indian Penal Code.

(3) The Commission or any other officer, not below the rank of a Gazetted Officer, specially authorised in this behalf by the Commission may enter any building or place where the Commission has reason to believe that any document relating to the subject matter of the inquiry may be found, and may seize any such document or take extracts or copies there from subject to the provisions of section 100 of the Code of Criminal Procedure, 1973, in so far as it may be applicable.

(4) The Commission shall be deemed to be a civil court and when any offence as is described in section 175, section 178, section 179, section 180 or section 228 of the Indian Penal Code is committed in the view or presence of the Commission, the Commission may, after recording the facts constituting the offence and the statement of the accused as provided for in the Code of Criminal Procedure, 1973, forward the case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case has been forwarded to him under section 346 of the Code of Criminal Procedure, 1973.

(5) Every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code, and the Commission shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

14. Investigation

(1) The Commission may, for the purpose of conducting any investigation pertaining to the inquiry, utilise the services of any officer or investigation agency of the Central Government or any State Government with the concurrence of the Central Government or the State Government, as the case may be.

(2) For the purpose of investigating into any matter pertaining to the inquiry, any officer or agency whose services are utilised under sub-section (1) may, subject to the direction and control of the Commission.

- (a) summon and enforce the attendance of any person and examine him;
- (b) require the discovery and production of any document; and
- (c) requisition any public record or copy thereof from any office.

(3) The provisions of section 15 shall apply in relation to any statement made by a person before any officer or agency whose services are utilised under sub-section (1) as they apply in relation to any statement made by a person in the course of giving evidence before the Commission.

(4) The officer or agency whose services are utilised under sub-section (1) shall investigate into any matter pertaining to the inquiry and submit a report thereon to the Commission within such period as may be specified by the Commission in this behalf.

(5) The Commission shall satisfy itself about the correctness of the facts stated and the conclusion, if any, arrived at in the report subbed to it under sub-section (4) and for this purpose the Commission may make such inquiry (including the examination of the person or persons who conducted or assisted in the investigation) as it thinks fit.

15. Statement made by persons to the Commission

No statement made by a person in the course of giving evidence before the Commission shall subject him to, or be used against him in, any civil or criminal proceeding except a prosecution for giving false evidence by such statement:

Provided that the statement —

- (a) is made in reply to the question which he is required by the Commission to answer; or
- (b) is relevant to the subject matter of the inquiry.

16. Persons likely to be prejudicially affected to be heard

If, at any stage of the inquiry, the Commission-

- (a) considers it necessary to inquire into the conduct of any person; or
- (b) is of the opinion that the reputation of any person is likely to be prejudicially affected by the inquiry;

it shall give to that person a reasonable opportunity of being heard in the inquiry and to produce evidence in his defence: Provided that nothing in this section shall apply where the credit of a witness is being impeached

Chapter IV

PROCEDURE

17. Inquiry into complaints

The Commission while inquiring into the complaints of violations of human rights may-

- (i) call for information or report from the Central Government or any State Government or any other authority or organisation subordinate thereto within such time as may be specified by it;

Provided that-

- (a) if the information or report is not received within the time stipulated by the Commission, it may proceed to inquire into the complaint on its own;
 - (b) if, on receipt of information or report, the Commission is satisfied either that no further inquiry is required or that the required action has been initiated or taken by the concerned Government or authority, it may not proceed with the complaint and inform the complainant accordingly;
- (ii) without prejudice to anything contained in clause (i), if it considers necessary, having regard to the nature of the complaint, initiate an inquiry.

18. Steps after inquiry

The Commission may take any of the following steps upon the completion of an inquiry held under this Act namely :

- (1) where the inquiry discloses, the commission of violation of human rights or negligence in the prevention of violation of human rights by a public servant, it may recommend to the concerned Government or authority the initiation of proceedings for prosecution or such other action as the Commission may deem fit against the concerned person or persons;
- (2) approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary;
- (3) recommend to the concerned Government or authority for the grant of such immediate interim relief to the victim or the members of his family as the Commission may consider necessary;
- (4) subject to the provisions of clause (5), provide a copy of the inquiry report to the petitioner or his representative;
- (5) the Commission shall send a copy of its inquiry report together with its recommendations to the concerned Government or authority and the concerned Government or authority shall, within a period of one month, or such further time as the Commission may allow, forward its comments on the report, including the action taken or proposed to be taken thereon, to the Commission;
- (6) the Commission shall publish its inquiry report together with the comments of the concerned Government or authority, if any, and the action taken or proposed to be taken by the concerned Government or authority on the recommendations of the Commission.

19. Procedure with respect to armed forces

(1) Notwithstanding anything contained in this Act, while dealing with complaints of violation of human rights by members of the armed forces, the Commission shall adopt the following procedure, namely :

- (a) it may, either on its own motion or on receipt of a petition, seek a report from the Central Government;
 - (b) after the receipt of the report, it may, either not proceed with the complaint or, as the case may be, make its recommendations to that Government.
- (2) The Central Government shall inform the Commission of the action taken on the recommendations within three months or such further time as the Commission may allow.
 - (3) The Commission shall publish its report together with its recommendations made to the Central Government and the action taken by that Government on such recommendations.
 - (4) The Commission shall provide a copy of the report published under sub-section (3) to the petitioner or his representative.

20. Annual and special reports of the Commission

(1) The Commission shall submit an annual report to the Central Government and to the State Government concerned and may at any time submit special reports on any matter which, in its opinion, is of such urgency or importance that it should not be deferred till submission of the annual report.

(2) The Central Government and the State Government, as the case may be, shall cause the annual and special reports of the Commission to be laid before each House of Parliament or the State Legislature respectively, as the case may be, along with a memorandum of action taken or proposed to be taken on the recommendations of the Commission and the reasons for non-acceptance of the recommendations, if any.

Chapter V

STATE HUMAN RIGHTS COMMISSIONS

21. Constitution of State Human Rights Commissions

(1) A State Government may constitute a body to be known as the (name of the State) Human Rights Commission to exercise the powers conferred upon, and to perform the functions assigned to, a State Commission under this chapter.

(2) The State Commission shall consist of

- (a) a Chairperson who has been a Chief Justice of a High Court;
- (b) one Member who is, or has been, a Judge of a High Court;
- (c) one Member who is, or has been, a district judge in that State;
- (d) two Members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.

(3) There shall be a Secretary who shall be the Chief Executive Officer of the State Commission and shall exercise such powers and discharge such functions of the State Commission as it may delegate to him.

(4) The headquarters of the State Commission shall be at such place as the State Government may, by notification, specify.

(5) A State Commission may inquire into violation of human rights only in respect of matters relatable to any of the entries enumerated in List II and List III in the Seventh Schedule to the Constitution:

Provided that if any such matter is already being inquired into by the Commission or any other Commission duly constituted under any law for the time being in force, the State Commission shall not inquire into the said matter:

Provided further that in relation to the Jammu and Kashmir Human Rights Commission, this sub-section shall have effect as if for the words and figures "List II and List III in the Seventh Schedule to the Constitution", the words and figures "List III in the Seventh Schedule to the Constitution as applicable to the State of Jammu and Kashmir and in respect of matters in relation to which the Legislature of that State has power to make laws" had been substituted.

22. Appointment of Chairperson and other Members of State Commission

(1) The Chairperson and other Members shall be appointed by the Governor by warrant under his hand and seal:

Provided that every appointment under this sub-section shall be made after obtaining the recommendation of a Committee consisting of

- (a) the Chief Minister — Chairperson
- (b) Speaker of the Legislative Assembly — Member
- (c) Minister in-charge of the Department of Home, in that State — Member
- (d) Leader of the Opposition in the Legislative Assembly — Member

Provided further that where there is a Legislative Council in a State, the Chairman of that Council and the Leader of the Opposition in that Council shall also be members of the Committee.

Provided also that no sitting Judge of a High Court or a sitting District Judge shall be appointed except after consultation with the Chief Justice of the High Court of the concerned State.

(2) No appointment of a Chairperson or a Member of the State Commission shall be invalid merely by reason of any vacancy in the Committee.

23. Removal of a Member of the State Commission

(1) Subject to the provisions of sub-section (2), the Chairperson or any other member of the State Commission shall only be removed from his office by order of the President on the ground of proved misbehaviour or incapacity after the Supreme Court, on a reference being made to it by the President, has, on inquiry held in accordance with the procedure prescribed in that behalf by the Supreme Court, reported that the Chairperson or such other Member, as the case may be, ought on any such ground to be removed.

(2) Notwithstanding anything in sub-section (1), the President may by order remove from office the Chairperson or any other Member if the Chairperson or such other Member, as the case may be –

- (a) is adjudged an insolvent; OR
- (b) engages during his term of office in any paid employment outside the duties of his office; OR
- (c) is unfit to continue in office by reason of infirmity of mind or body; OR
- (d) is of unsound mind and stands so declared by a competent court; OR
- (e) is convicted and sentenced to imprisonment for an offence which in the opinion of the President involves moral turpitude.

24. Term of office of Members of the State Commission

(1) A person appointed as Chairperson shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier;

(2) A person appointed as a Member shall hold office for a term of five years from the date on which he enters upon his office and shall be eligible for re-appointment for another term of five years;

Provided that no Member shall hold office after he has attained the age of seventy years.

(3) On ceasing to hold office, a Chairperson or a Member shall be ineligible for further employment under the Government of a State or under the Government of India.

25. Member to act as Chairperson or to discharge his functions in certain circumstances

(1) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the Governor may, by notification, authorise one of the Members to act as the Chairperson until the appointment of a new Chairperson to fill such vacancy.

(2) When the Chairperson is unable to discharge his functions owing to absence on leave or otherwise, such one of the Members as the Governor may, by notification, authorise in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

26. Terms and conditions of service of Members of the State Commission

The salaries and allowances payable to, and other terms and conditions of service of, the Members shall be such as may be prescribed by the State Government.

Provided that neither the salary and allowances nor the other terms and conditions of service of a Member shall be varied to his disadvantage after his appointment.

27. Officers and other staff of the State Commission

(1) The State Government shall make available to the Commission

- (a) an officer not below the rank of a Secretary to the State Government who shall be the Secretary of the State Commission; and
 - (b) such police and investigative staff under an officer not below the rank of an Inspector General of Police and such other officers and staff as may be necessary for the efficient performance of the functions of the State Commission.
- (2) subject to such rules as may be made by the State Government in this behalf, the State Commission may appoint such other administrative, technical and scientific staff as it may consider necessary.
- (3) The salaries, allowances and conditions of service of the officers and other staff appointed under sub-section (2) shall be such as may be prescribed by the State Government.

28. Annual and special reports of State Commission

- (1) The State Commission shall submit an annual report to the State Government and may at any time submit special reports on any matter which, in its opinion, is of such urgency or importance that it should not be deferred till submission of the annual report.
- (2) The State Government shall cause the annual and special reports of the State Commission to be laid before each House of State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House along with a memorandum of action taken or proposed to be taken on the recommendations of the State Commission and the reasons for non-acceptance of the reports, if any.

29. Application of certain provisions relating to National Human Rights Commission to State Commissions

The provisions of sections 9, 10, 12, 13, 14, 15, 16, 17 and 18 shall apply to a State Commission and shall have effect, subject to the following modifications, namely :-

- (a) references to "Commission" shall be construed as refer ences to "State Commission";
- (b) in section 10, in sub-section (3), for the word "Secretary General", the word "Secretary" shall be substituted;
- (c) in section 12, clause (f) shall be omitted;
- (d) in section 17, in clause (i), the words "Central Government or any" shall be omitted;

Chapter VI

HUMAN RIGHTS COURTS

30. For the purpose of providing speedy trial of offences arising out of violation of human rights, the State

Government may, with the concurrence of the Chief Justice of the High Court, by notification, specify for each district a Court of Session to be a Human Rights Court to try the said offences.

Provided that nothing in this section shall apply if

- (a) a Court of Session is already specified as a special court; or
- (b) a special court is already constituted, for such offences under any other law for the time being in force.

31. Special Public Prosecutor

For every Human Rights Court, the State Government shall, by notification, specify a Public Prosecutor or appoint an advocate who has been in practice as an advocate for not

less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in that Court.

Chapter VII

FINANCE, ACCOUNTS AND AUDIT

32. Grants by the Central Government

(1) The Central Government shall after due appropriation made by Parliament by law in this behalf, pay to the Commission by way of grants such sums of money as the Central Government may think fit for being utilised for the purposes of this Act.

(2) The Commission may spend such sums as it thinks fit for performing the functions under this Act, and such sums shall be treated as expenditure payable out of the grants referred to in sub-section (1).

33. Grants by the State Government

(1) The State Government shall, after due appropriation made by Legislature by law in this behalf, pay to the State Commission by way of grants such sums of money as the State Government may think fit for being utilised for the purposes of this Act.

(2) The State Commission may spend such sums as it thinks fit for performing the functions under Chapter V, and such sums shall be treated as expenditure payable out of the grants referred to in sub-section (1).

34. Accounts and Audit

(1) The Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The Accounts of the Commission shall be audited by the Comptroller and Auditor-General at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Commission to the Comptroller and Auditor-General.

(3) The Comptroller and Auditor-General or any person appointed by him in connection with the audit of the accounts of the Commission under this Act shall have the same rights and privileges and the authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Commission.

(4) The accounts of the Commission as certified by the Comptroller and Auditor-General or any other person appointed by him in this behalf, together with the audit report thereon shall be forwarded only to the Central Government by the Commission and the Central Government shall cause the audit report to be laid as soon as may be after it is received before each House of Parliament.

35. Accounts and Audit of State Commission

(1) The State Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the State Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the State Commission shall be audited by the Comptroller and Auditor-General at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the State Commission to the Comptroller and Auditor-General.

(3) The Comptroller and Auditor-General or any person appointed by him in connection with the audit of the accounts of the State Commission under this Act shall have the same rights and privileges and the authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the State Commission.

(4) The accounts of the State Commission, as certified by the Comptroller and Auditor-General or any other person appointed by him in this behalf, together with the audit report thereon, shall be forwarded annually to the State Government by the State Commission and the State Government shall cause the audit report to be laid, as soon as may be after it is received, before the State Legislature.

Chapter VIII

MISCELLANEOUS

36. Matters not subject to jurisdiction of the Commission

(1) The Commission shall not inquire into any matter which is pending before a State Commission or any other Commission duly constituted under any law for the time being in force.

(2) The Commission or the State Commission shall not inquire into any matter after the expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed.

37. Constitution of special investigation teams

Notwithstanding anything contained in any other law for the time being in force, where the Government considers it necessary so to do, it may constitute one or more special investigation teams, consisting of such police officers as it thinks necessary for purposes of investigation and prosecution of offences arising out of violations of human rights.

38. Protection of action taken in good faith

No suit or other legal proceeding shall lie against the Central Government, State Government, Commission, the State Commission or any Member thereof or any person acting under the direction either of the Central Government, State Government, Commission or the State Commission in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or any order made thereunder or in respect of the publication by or under the authority of the Central Government, State Government, Commission or the State Commission of any report paper or proceedings.

39. Members and officers to be public servants

Every Member of the Commission, State Commission and every officer appointed or authorised by the Commission or the State Commission to exercise functions under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

40. Power of Central Government to make rules

(1) The Central Government may, by notification, make rules to carry out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters namely :

- (a) the salaries and allowances and other terms and conditions of service of the Members under section 8;
- (b) the conditions subject to which other administrative, technical and scientific staff may be appointed by the Commission and the salaries and allowances of officers and other staff under sub-section (3) of section 11;
- (c) any other power of a civil court required to be prescribed under clause (f) of sub-section (1) of section 13;
- (d) the form in which the annual statement of accounts is to be prepared by the Commission under sub-section (1) of section 34; and
- (e) any other matter which has to be, or may be, prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

41. Power of State Government to make rules

(1) The State Government may, by notification, make rules to carry out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :

- (a) the salaries and allowances and other terms and conditions of service of the members under section 26;
- (b) the conditions subject to which other administrative, technical and scientific staff may be appointed by the State Commission and the salaries and allowances of officers and other staff under sub-section (3) of section 27;
- (c) the form in which the annual statement of accounts is to be prepared under sub-section (1) of section 35.

(3) Every rule made by the State Government under this section shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House.

42. Power to remove difficulties

(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government, may by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty.

Provided that no such order shall be made after the expiry of the period of two years from the date of commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each house of Parliament.

43. Repeal and Savings

(1) The Protection of Human Rights Ordinance, 1993 is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of this Act.

APPENDIX-III

International Covenant on Economic, Social and Cultural Rights.

Adopted and opened for signature, ratification and accession by General Assembly
resolution 2200A (XXI)
of 16 December 1966

Entry into force 3 January 1976, in accordance with article 27

Preamble

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART I

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Article 4

The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.

2. No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

Article 8

1. The States Parties to the present Covenant undertake to ensure:

(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;

(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

Article 9

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

Article 10

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to

life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

Article 11

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Article 13

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

(a) Primary education shall be compulsory and available free to all;

(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph I of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 14

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

Article 15

1. The States Parties to the present Covenant recognize the right of everyone:

(a) To take part in cultural life;

(b) To enjoy the benefits of scientific progress and its applications;

(c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

PART IV

Article 16

1. The States Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein.

2.

(a) All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit copies to the Economic and Social Council for consideration in accordance with the provisions of the present Covenant;

(b) The Secretary-General of the United Nations shall also transmit to the specialized agencies copies of the reports, or any relevant parts therefrom, from States

Parties to the present Covenant which are also members of these specialized agencies in so far as these reports, or parts thereof, relate to any matters which fall within the responsibilities of the said agencies in accordance with their constitutional instruments.

Article 17

1. The States Parties to the present Covenant shall furnish their reports in stages, in accordance with a programme to be established by the Economic and Social Council within one year of the entry into force of the present Covenant after consultation with the States Parties and the specialized agencies concerned.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Covenant.

3. Where relevant information has previously been furnished to the United Nations or to any specialized agency by any State Party to the present Covenant, it will not be necessary to reproduce that information, but a precise reference to the information so furnished will suffice.

Article 18

Pursuant to its responsibilities under the Charter of the United Nations in the field of human rights and fundamental freedoms, the Economic and Social Council may make arrangements with the specialized agencies in respect of their reporting to it on the progress made in achieving the observance of the provisions of the present Covenant falling within the scope of their activities. These reports may include particulars of decisions and recommendations on such implementation adopted by their competent organs.

Article 19

The Economic and Social Council may transmit to the Commission on Human Rights for study and general recommendation or, as appropriate, for information the reports concerning human rights submitted by States in accordance with articles 16 and 17, and those concerning human rights submitted by the specialized agencies in accordance with article 18.

Article 20

The States Parties to the present Covenant and the specialized agencies concerned may submit comments to the Economic and Social Council on any general recommendation under article 19 or reference to such general recommendation in any report of the Commission on Human Rights or any documentation referred to therein.

Article 21

The Economic and Social Council may submit from time to time to the General Assembly reports with recommendations of a general nature and a summary of the information received from the States Parties to the present Covenant and the specialized agencies on the measures taken and the progress made in achieving general observance of the rights recognized in the present Covenant.

Article 22

The Economic and Social Council may bring to the attention of other organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance any matters arising out of the reports referred to in this part of the present Covenant which may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant.

Article 23

The States Parties to the present Covenant agree that international action for the achievement of the rights recognized in the present Covenant includes such methods as the conclusion of conventions, the adoption of recommendations, the furnishing of technical

assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study organized in conjunction with the Governments concerned.

Article 24

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 25

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART V

Article 26

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed the present Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 27

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 28

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 29

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.

3. When amendments come into force they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 30

Irrespective of the notifications made under article 26, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph I of the same article of the following particulars:

(a) Signatures, ratifications and accessions under article 26;

(b) The date of the entry into force of the present Covenant under article 27 and the date of the entry into force of any amendments under article 29.

Article 31

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 26.

APPENDIX-IV

International Covenant on Civil and Political Rights

Adopted and opened for signature, ratification and accession by General Assembly
resolution 2200A (XXI)
of 16 December 1966

entry into force 23 March 1976, in accordance with Article 49

Preamble

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART I

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to

law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3.

(a) No one shall be required to perform forced or compulsory labour;

(b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

(c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:

(i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(iv) Any work or service which forms part of normal civil obligations.

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2.

(a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 11

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the

commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 20

1. Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality.

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other

members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

PART IV

Article 28

1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.

2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.

3. The members of the Committee shall be elected and shall serve in their personal capacity.

Article 29

1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in article 28 and nominated for the purpose by the States Parties to the present Covenant.

2. Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.

3. A person shall be eligible for renomination.

Article 30

1. The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.

2. At least four months before the date of each election to the Committee, other than an election to fill a vacancy declared in accordance with article 34, the Secretary-General of the United Nations shall address a written invitation to the States Parties to the present Covenant to submit their nominations for membership of the Committee within three months.

3. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties to the present Covenant no later than one month before the date of each election.

4. Elections of the members of the Committee shall be held at a meeting of the States Parties to the present Covenant convened by the Secretary General of the United Nations at the Headquarters of the United Nations. At that meeting, for which two thirds of the States Parties to the present Covenant shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

Article 31

1. The Committee may not include more than one national of the same State.

2. In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.

Article 32

1. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first

election, the names of these nine members shall be chosen by lot by the Chairman of the meeting referred to in article 30, paragraph 4.

2. Elections at the expiry of office shall be held in accordance with the preceding articles of this part of the present Covenant.

Article 33

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.

2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

Article 34

1. When a vacancy is declared in accordance with article 33 and if the term of office of the member to be replaced does not expire within six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present Covenant, which may within two months submit nominations in accordance with article 29 for the purpose of filling the vacancy.

2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant. The election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.

3. A member of the Committee elected to fill a vacancy declared in accordance with article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

Article 35

The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

Article 36

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant.

Article 37

1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.

2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

3. The Committee shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva.

Article 38

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

Article 39

1. The Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that:

(a) Twelve members shall constitute a quorum;

(b) Decisions of the Committee shall be made by a majority vote of the members present.

Article 40

1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights: (a) Within one year of the entry into force of the present Covenant for the States Parties concerned;

(b) Thereafter whenever the Committee so requests.

2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.

3. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.

4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.

5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.

Article 41

1. A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

(a) If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation, or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter;

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in

conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged;

(d) The Committee shall hold closed meetings when examining communications under this article;

(e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the present Covenant;

(f) In any matter referred to it, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;

(g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing;

(h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:

(i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when ten States Parties to the present Covenant have made declarations under paragraph I of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 42

1.

(a) If a matter referred to the Committee in accordance with article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an ad hoc Conciliation Commission (hereinafter referred to as the Commission). The good offices of the Commission shall be made available to the States Parties concerned with a view to an amicable solution of the matter on the basis of respect for the present Covenant;

(b) The Commission shall consist of five persons acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission concerning whom no agreement has been reached shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties concerned, or of a State not Party to the present Covenant, or of a State Party which has not made a declaration under article 41.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may be held at such other convenient places as the Commission may determine in consultation with the Secretary-General of the United Nations and the States Parties concerned.

5. The secretariat provided in accordance with article 36 shall also service the commissions appointed under this article.

6. The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States Parties concerned to supply any other relevant information.

7. When the Commission has fully considered the matter, but in any event not later than twelve months after having been seized of the matter, it shall submit to the Chairman of the Committee a report for communication to the States Parties concerned:

(a) If the Commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter;

(b) If an amicable solution to the matter on the basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached;

(c) If a solution within the terms of subparagraph (b) is not reached, the Commission's report shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned, and its views on the possibilities of an amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned;

(d) If the Commission's report is submitted under subparagraph (c), the States Parties concerned shall, within three months of the receipt of the report, notify the Chairman of the Committee whether or not they accept the contents of the report of the Commission.

8. The provisions of this article are without prejudice to the responsibilities of the Committee under article 41.

9. The States Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

10. The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties concerned, in accordance with paragraph 9 of this article.

Article 43

The members of the Committee, and of the ad hoc conciliation commissions which may be appointed under article 42, shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 44

The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

Article 45

The Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities.

PART V

Article 46

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 47

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART VI

Article 48

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed this Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 49

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 50

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 51

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General

shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes. 3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 52

1. Irrespective of the notifications made under article 48, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph I of the same article of the following particulars:

- (a) Signatures, ratifications and accessions under article 48;
- (b) The date of the entry into force of the present Covenant under article 49 and the date of the entry into force of any amendments under article 51.

Article 53

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 48.